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THE INSANE AND THE LAW:

A PLAIN GUIDE

FOR MEDICAL MEN, SOLICITORS, AND OTHERS.

"We are not ourselves,
When Nature, being oppressed, commands the mind
To suffer with the body."—*King Lear*, Act II, Scene 4.

THE INSANE AND THE LAW:

A PLAIN GUIDE

FOR MEDICAL MEN, SOLICITORS, AND OTHERS,

AS TO

(I) THE DETENTION AND TREATMENT; (II) MAINTENANCE; (III) CIVIL
AND CRIMINAL RESPONSIBILITY; AND (IV) CAPACITY
EITHER (a) TO GIVE EVIDENCE OR (b) TO MAKE A
WILL, OF PERSONS MENTALLY AFFLICTED;

WITH

HINTS TO MEDICAL WITNESSES AND TO CROSS-EXAMINING
COUNSEL.

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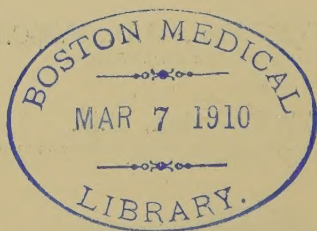


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PREFACE

MEDICAL and Legal Practitioners are alike liable at any moment to be suddenly asked to advise upon questions arising out of the mental affliction of a patient or client, particularly with respect to matters such as those indicated on the title-page of this work. For the correct solution of such questions, some little knowledge of the practice of the sister profession is required equally by the medical man and the lawyer. Under these circumstances, there appears to exist a need for some statement of the law as to the insane, written as far as possible from the point of view of both professions. The Authors believe that no such summary has existed up to the present, but they have attempted in the following pages to supply the want. This work, however, is intended to include only such subjects as are kindred both to law and to medicine, or, in a word, to treat of the *personal position only* of the insane. Mere details of legal practice are, therefore, not within the scope of the work; where it has been found necessary to refer at any length to such matters, it will be understood that they are only considered in order to enable the reader to obtain a better grasp of the matters to which they are subsidiary.

Since the work was first contemplated, an additional interest has been lent to the subject of the Criminal Responsibility of the Insane by the discussion which arose thereon

at the 1894 (Bristol) meeting of the British Medical Association, and subsequently in the 'Times' newspaper, and in which one of the present Authors has taken some part.

The experience of the two first-named Authors in their respective professions has, it is hoped, enabled them, with the assistance of the diligence of the third, to provide a practical summary of the Law as to the insane which will prove useful alike to the Medical Practitioner and the Lawyer, supplying the former with so much Law as the necessities of his practice may demand, and imparting to the latter just such a degree of medical knowledge as may be requisite to enable him to deal intelligently in his practice with cases concerning alike the Insane and the Law.

LONDON;

January, 1895.

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THE INSANE AND THE LAW

INTRODUCTORY CHAPTER

*** In the body of the work, cases cited are only referred to by name and date. For the convenience of legal readers or others who may require to examine them in detail, legal references to all the "Reports" in which they may be found are added in "The Table of Cases."

THE difficulty of framing a definition of "Insanity" which will be equally applicable both in law and in medicine is considerable [see *Taylor's Medical Jurisprudence*, cap. 88; *Pope on Lunacy*, 2nd edit., pp. 1, 2].

In the extremely able and useful legal work on lunacy which is last cited (*Pope on Lunacy*, 2nd edit.), it is suggested (at p. 1) that insanity may be defined, both for legal and for medical purposes, as a "defect of reason consisting either in its total or partial absence, or in its perturbation." The late Mr. Justice Stephen defined it as follows: "Insanity means a state in which one or more of the mental functions [of feeling, and knowing, emotion, and willing] is performed in an abnormal manner, or not performed at all, by reason of some disease of the brain or nervous system" [*Stephen's History of the Criminal Law*, vol. ii, p. 130].

While the definitions of insanity which have been quoted above appear to be on the whole as good as any which have hitherto been framed, as being common to both law and medicine, the medical man will be prudent who, when in the witness-box, declines to commit himself to any definition of insanity. In *Tuke's Dictionary of Psychological Medicine* (at p. 330, sub-title "Definition of Insanity") it is said: "In a court of law no mental expert will be induced, if he be wise and regardful of his reputation, to give a definition of insanity. A considerate judge, one really as well as nominally learned, may be expected to address him

to the same effect as we have heard Lord Chief Justice Coleridge address a witness when requested by counsel to define insanity, 'I suppose you do not consider that is possible seeing that it assumes so many forms.' " *

But, though any mere abstract definition, such as is furnished by either of those which are set out above, is of comparatively little practical importance, it is necessary, for a right understanding of insanity as regarded by the two sciences respectively, that attention should be at once, and pointedly, drawn to the fact that law and medicine approach the subject of insanity from entirely different points of view. Medical science regards insanity simply *as due to disease*. The presence of this disease is shown by various symptoms, of which the *conduct* of the patient is one, but only one. Law, on the other hand, is concerned with a man's *conduct*, and with that only. If the law, in any particular instance, hold that the usual consequences of such conduct do not follow, by reason of the man's mind having been proved to be in an unsound condition at the time at which such conduct took place, it then—but only then, and so far as his conduct relates to that given act—treats the man as having been at the moment of the act in a state of "insanity," and in consequence not responsible to it for such act. The only case in which the law looks upon insanity in the same light as that in which medicine regards it,—that is, merely as a state due to disease,—is in the instance of the rule of positive law which says (as we shall see hereafter, *post*, p. 37) that no one shall be permitted to undertake the care of persons suffering from the condition called insanity—in other words, of "lunatics"—without complying with certain requisites, regarded by the law as necessary for the protection of such persons. In all other cases, the principle that the law judges each man by his competency or responsibility in respect of the particular act under investigation is strictly applied. The result is that, apart from its standard in the case just mentioned (where it, for once,

* As to the impossibility of framing a definition of insanity, for the purposes of criminal law, which will embrace every possible form of the disease, see, further, the discussion following *MacNaughten's case* (*post*, on "Criminal Responsibility").

adopts the medical view), the law, as we shall presently see, has no less than eight different standards (enumerated *post*, p. 37) by which it judges of a man's sanity or insanity. In general, it does not (like medicine) merely ask the abstract question whether the man is insane or not, but inquires if he be *so* insane as not to be fit to execute, or not to be responsible for, the particular act under consideration. In other words, law usually (for the remark applies to other systems of jurisprudence as well as to English law) adopts the principle of "degrees of insanity," some detailed remarks upon which will be found on a later page of this chapter (see *post*, p. 15). It does not require perfect sanity to be found in any man, but only requires, in each individual, such a degree of mental soundness as renders him competent to do, or be responsible for doing, a given thing. This principle is, in English law, quaintly, but tersely and accurately, expressed by an old paradox or antithesis, which doubtless had its origin in the days when lawyers prided themselves on emulating the subtle distinctions of the scholiasts. This is to the effect that to say that a man is "insane" is defamatory, but to say that he is "not of sound mind" is not so; since no being is of perfectly sound mind, save the Deity Himself [*Pope on Lunacy*, 2nd edit., p. 3, citing 1 Chitt, *Med. Jur.*, p. 351]. But, though they thus approach the subject from different points of view, medicine and English law nevertheless agree in each dividing all mental incapacity into two great classes. The divisions made by the two sciences, do not, indeed, bear names which are technically identical.

They both are, however, based, it is submitted, upon the same fact. If this be so, and if it can be shown that the foundation of the division rests, in each case, upon the same scientific basis, not only will the divisions respectively made by law and medicine be the more readily understood, but a flood of light will have been thrown upon the common principle which underlies them both.

The fact, upon which it is thought that the division is founded both in medicine and in law, is that of the broad and obvious distinction between mere congenital weakness of mind (idiocy or imbecility) on the one hand, and a dis-

turbed or perverted condition of a fully, or partially, developed mind upon the other. Medicine and English law respectively work this out in detail something in the following way.

English law knows two classes,—and two classes only,—of the mentally afflicted; namely, the natural fool, or congenital idiot; and what it calls the “lunatic” who has once possessed mental power, but enjoys it no longer. Medicine recognises the class of idiots (*Amentia*) and congenital imbeciles on the one hand; and on the other hand all forms of unsoundness of mind arising after the mind has become partially or fully developed, which are known as “insanity.”

With regard to this second class (*Insanity*), it may be observed that it includes numerous *forms* of unsoundness of mind, which have been classified in various ways, and upon various bases. It would be impossible within the limits of this work, and indeed foreign to its purpose, to give a detailed list of all the forms that have been described, especially as medical men are not finally agreed upon the modes or bases of classification. Yet it would appear well to mention, shortly, some of the more prominent groups of those mental diseases which may be included in the class under consideration.

In the first place, then, there is in insanity a large group of cases in which the main characteristic is mental depression and mental pain out of proportion to the causes. This is the condition known as *Melancholia*, which may vary from a state of simple depression, to one of extreme agitation and active misery, and is very frequently associated with a tendency to suicide. In melancholia, the patient's morbid ideas are commonly restricted to a few painful ones, which may, however, profoundly influence his conduct, more especially in connection with his own safety or existence, but sometimes may have a serious bearing upon the safety of others.

Secondly, there is also in insanity a group in which, on the contrary, ideas flow rapidly, and, as a rule, not painfully. The flow is commonly so rapid that incoherence of speech results, while there is general loss of control and disorder of

conduct. This is the condition known as "*Mania*," and it may vary from what is called "*simple mania*" to a profound state of mental confusion and physical prostration known as "*acute delirious mania*," which is commonly fatal. Intermediate between these, however, stands the type known as "*acute mania*," the raving madness of the older authors, and including the "*furiosus*" of the old law. It must, however, be stated that there are many patients who are suffering from acute mania who are not "*furiosi*," that is to say are not dangerously hostile, threatening, or homicidal to those about them, but who, on the contrary, although suffering from general loss of control, are gay and abnormally happy, and though profoundly disordered, are certainly not "*furiosi*." It may be added that, instead of being confined to a definite group of cases, the term "*mania*" has been, and often is, used very loosely, as almost synonymous with insanity or even eccentricity, so that we hear of "*a mania*" for this or that. It has also been coupled with such words as "*homicidal*" or "*suicidal*" or "*religious*." The tendency in medicine is, however, to restrict it, till a better term is invented or a better classification is arranged, to the group we have considered above. At the same time certain expressions, such as *kleptomania*, *dipsomania*, *pyromania*, &c., have become sacred by long use, and have well-defined meanings. *Mania*, often of a very severe and dangerous, though transitory type, is a frequent concomitant of epilepsy and alcoholic excess, and it is the form of insanity most commonly following childbirth.

Thirdly, there is in insanity a group of cases, characterised chiefly by a state of limited and fixed delusion, often without general depression or excitement or, at least for a time, great impairment of other mental faculties. To varieties of this group the term "*monomania*" has been applied, though the word is not now used to the same extent as formerly. Other terms also used in connection with this group are "*delusional insanity*" and "*paranoia*." Although in many patients suffering from this form of disorder the insanity may be said to be partial, as the whole of the mental faculties are not necessarily disturbed, yet as the mental and physical faculties are so closely bound up together, the existence of a serious

flaw in one department of mind is apt to cause serious disorder of conduct. Patients who suffer from this form of mental disorder are, not unfrequently, exceedingly dangerous and homicidal, and they are perhaps the more dangerous because at first sight their general conduct does not suggest unsoundness of mind. They are the persons in whose madness there is often considerable method,—who will premeditate murder, and wait for an opportunity of carrying it out; they may be, at the time, fully conscious of what they are doing, and of the legal consequences of their acts, and yet are impelled to the particular line of conduct by the presence of some overpowering delusion. Many of the celebrated cases in which the question has arisen as to the criminal responsibility of the insane have been of this nature. Insane persons who fall within this group are regarded, both by medicine and also under certain conditions by law, as not responsible for their actions. The way in which the law arrives at the conclusion that some persons included in this group are not responsible is by the legal doctrine of “partial insanity,” which will be explained both presently (*post*, p. 15) and also in the chapter on “Criminal Responsibility.”

Fourthly, there is in insanity a group of cases in which the principal characteristic is a loss of mental power. These are the cases to which the term “dementia” is applied in medicine. The condition which the term denotes may, on the one hand, arise *primarily*, as, for example, in some cases which occur during adolescence or in old age (senile dementia), or from continued alcoholic excess or occasionally from some coarse disease of the brain (such as hæmorrhage, tumour, &c.), or, on the other hand, may be *secondary* to some acute attack of mental disorder which is not recovered from. A large proportion of the patients who form the chronic population of our asylums are “dements,” whose condition is the result of former acute attacks of insanity. They are, as it were, wrecks from the mental storms through which they have passed. The term dementia has sometimes been used to include idiocy and imbecility, but these may be more conveniently described separately. Insanity associated with epilepsy commonly results eventually in dementia.

Fifthly, there is a group of cases in which the disorder seems to consist in uncontrollable impulsive tendencies, which are not necessarily associated with other marked evidence of insanity. Under this heading may be mentioned animal impulses (satyriasis, nymphomania, &c.), homicidal and suicidal impulses, and such conditions as dipsomania and kleptomania.

Kleptomania deserves a word of explanation in passing. It has been observed previously (*ante*, p. 5) that the term "mania," in connection with a word which will signify its object, is less frequently employed in scientific language now than it formerly was, although "kleptomania" and some similar words have, as it were, become consecrated by long use, and grown to be a part of the English language employed in common speech. Kleptomania is a word derived from the Greek (*κλέπτω*, a thief), which is technically used to denote a form of insanity which consists in laying hold of the property of other people. There is hardly a technical term in our language which has been more misused. When (as is said to have been the case with a distinguished peer, now deceased) a great nobleman, who cannot possibly have need of them, or use for them, clandestinely takes his neighbours' silver spoons, we have a genuine case of kleptomania. When the defence of kleptomania is set up on behalf of a poor governess, who has been detected in secretly taking from the Stores articles which she sadly needs, but has not the money to pay for, it requires a considerable stretch of charity to accept the defence of kleptomania.

In connection with this, it will be well to consider briefly the condition which has been called "*Moral Insanity*." While it does not seem desirable to discuss here the advisability of having a separate heading of this nature, it may, at least, be said that it is well recognised by medical science that there are undoubted instances of people whose moral sense seems never to develop, even under the most careful training, though they may not have very marked evidence of intellectual defect, and these are called moral idiots, or moral imbeciles. And, further than this, it is also medically recognised that in many cases insanity shows itself first by aberrations of the moral sense, and by some act which, though really due to disease, is regarded as a breach

of the moral code. The same condition may follow an acute attack of undoubted insanity, the patient recovering intellectually, but being left with some character defect or blemish. Again, there are cases in which the disorder shows itself mainly in this direction throughout, though associated frequently with some intellectual disturbance, or departure from normal conduct in other directions. Moral insanity is, however, said not to be recognised at present by English law [see *Pope on Lunacy*, 2nd edit., p. 9] (but on this question see *post*, "Criminal Responsibility").

Epilepsy is a disorder of the nervous centres characterised by seizures in which the patient is for the time being unconscious, though it may be merely momentarily, this condition being commonly associated with convulsions and followed by a state of confusion or stupor. In some cases there may be a period of confusion with apparently purposive acts taking the place of convulsive seizures, and in other cases acute dangerous maniacal excitement may supervene, either after a convulsive attack or taking the place of it. It often happens that the attacks of epilepsy are at first very brief, but increase in intensity and duration as time goes on. While the epileptic fit is upon him, the sufferer is quite unconscious of what he is about. It is no uncommon thing, for example, for an epileptic patient in an asylum to strike another a violent blow, and yet be a moment afterwards quite unconscious of having done so. It is important (especially in criminal cases) to notice that it is characteristic of epilepsy that a sufferer should be unconscious after he has come out of a fit of what he has done during it.

To those cases, in which impulsive outbursts take the place of convulsive seizures, the term "masked epilepsy" (*epilepsy larvée*) is applied. The patient may, while in this condition, though unconscious at the time, commit acts, which are apparently prompted by purpose and design, with the most serious results to others.

At first sight, the singular condition of paroxysm to which natives of the Malay Peninsula are subject which is called "running amuk" (or amok) seems as if it were somewhat allied to epilepsy; medical authorities are, however, agreed that it may most accurately be described as a species of

acute homicidal insanity. They are also tolerably unanimous in considering that "running amuk" is really a disease, and that it will generally be found that its subjects are afflicted with other symptoms indicating unsoundness of mind or have undergone emotional strain or shock likely to lead to mental disorder. A person suffering from an attack of this description grows suddenly wildly excited and attacks, often fatally, several persons in succession. There is often, however, a short period of depression preceding this, and there appears to be subsequently great mental confusion and either loss or imperfect memory of the acts performed. ("The Amok of the Malays," by W. Gilmore Ellis, M.D., Government Asylum, Singapore, *Journ. Ment. Sci.*, July, 1893). It is said that the abuse of Indian hemp leads to this condition. No case is known to have yet occurred in our courts in which the defence that the accused was at the time the victim of this singular species of insanity has been set up. But allusion is made to it here because it is quite possible that such a case may arise in a criminal court on the trial of some Malay who has been brought within the court's jurisdiction on board ship before committing his alleged offence.

To establish a defence to a criminal charge on the ground of epilepsy, it is not sufficient to show that the accused is subject to epileptic fits, but it must be shown that the deed with which he is charged was actually committed by him while under the influence of an attack of epilepsy, or that he had before the time when he was guilty of it become imbecile as the result of long-continued and frequent attacks of that disease. It is necessary to point this out because attempts are frequently made to get an acquittal on the ground of epilepsy without any proof whatever that the accused was actually under the influence of epilepsy when he committed the act with which he is charged. The earliest instance of a reported case of a futile attempt of this sort is afforded by *Bowler's case* (1812), which will be found fully set out on a subsequent page of this book (see *post*, chapter on "Criminal Responsibility"). Another example was afforded at the Central Criminal Court some years ago, when the accused on whose behalf the defence of epilepsy had been set up, actually had an attack which

medical men who were in court pronounced to be a genuine fit, partially at least of an epileptic character, but who was nevertheless convicted of the charge against him because the evidence failed to show that he was in any way affected by epilepsy at the moment when his crime was committed.*

The case of *Williams*, the Peter-Tavy murderer, which will be discussed hereafter in connection with the subject of heredity, besides being one which well illustrates the subject in connection with which it is quoted, is also another instance of this kind of abortive defence.

It may here be mentioned that uncontrollable impulses to commit an offence, unless due to epileptic affection, are said to be not recognised at present by English law as affording any defence, at all events in cases in which they are not proved to be accompanied by any delusion. This subject will, however, be more fully discussed hereafter in the chapter upon "Criminal Responsibility."

This will also be a convenient place at which to say a little about a form of brain disease which is intimately associated with insanity. This is what is known to medical men as "*The general paralysis of the insane*," but is often popularly called "softening of the brain," though this latter term may also be applied to some other brain diseases. "General paralysis of the insane" is a disease characterised by progressive decay of the mental and physical powers, associated with characteristic degenerative changes in the brain, and ending, as a rule, in death in about two or three years from the outset of the symptoms. In the minds of those who are not familiar with the disease there is often a difficulty in understanding how a patient, who perhaps appears, in the early stages at least, to be abnormally energetic and active, can be said to be suffering from "paralysis." It must be mentioned, therefore, that the earlier paralytic symptoms are as a rule slight, and shown

* *R. v. Treadaway*, tried at Old Bailey February 8th, 1877, and reported *Times*, and also *Daily News*, 9th February, 1877, and also in Old Bailey Sessions' Papers, for Sessions held 5th February, 1877, at pp. 434—436, and especially at p. 445, but cited *ex relatione* J. Peeke Richards, Esq., formerly Superintendent at Middlesex County Asylum at Hanwell, who was in court at the time.

in the muscles of the tongue, face, and eyes, and in characteristic affections of the speech and handwriting. Sooner or later the gait is also affected, and as the malady advances, the muscular power of tongue, face, hands, and legs, and other parts progressively fails, till at last the patient is unable to help himself, and becomes bedridden. As the disease progresses, convulsive seizures, attended by unconsciousness and by more marked paralytic symptoms, commonly occur. From the mental point of view, the disease is essentially a progressive dementia, a gradually increasing failure of mental power, till in the last stages the patient lies in bed completely apathetic to all external influences, and having no memory, no intelligence, no volition, and probably only a minimum of sensation, death preceded by coma at last closing the scene.

It may be asked why the disease is not included under the heading of dementia, and in reply to this it may be said that, whereas the majority of cases of dementia are compatible with long life, and absence of any signs of progressive paralysis, this disease is essentially a fatal one, and has well-marked progressively paralytic symptoms. It differs from senile dementia in the fact that it most commonly affects men in the prime of life, who are in the midst of hard work, and appears to be largely due either to excesses of one kind or another, or to the stresses which affect those who are in middle life. But another reason for its separate consideration is the fact that, though "Dementia," in the sense of failure of mental power and capacity, runs through the whole course of the disease, there are very commonly either maniacal excitement or melancholic depression in the earlier stages. The maniacal excitement is, indeed, almost characteristic, and is often attended by a feeling of perfect health and strength, unlimited powers and capacities, unbounded wealth and highly exalted position in the world, or even in the universe or Heavenly Hierarchy. But what makes the disease important from the medico-legal point of view is the fact that in the very earliest stages, before it is recognised, or even recognisable, that the patient has any intellectual defect, there is frequently some alteration in the individual's moral characteristics, with the consequence that general paralytics, in

these stages of the disease, frequently come under the notice of the law, in consequence of some breach of it. Stealing, obtaining goods under false pretences, public indecency, attempts at rape, drunkenness, and so forth, may bring the patient into contact with the arm of the law, and it has again and again happened that a sufferer from this disease has undergone the penalties of the law before his condition has been recognised. Here, then, is a disease of the brain causing at first serious disorder of conduct chiefly displaying itself in the direction of breaches of what is recognised as the moral code. It must be allowed that this is a potent argument for those who believe that the whole of a man's conduct depends on the working of his nervous system. This condition must not be confounded with the more common forms of paralysis, as, for example, that affecting the limbs of one side (hemiplegia), in which of course there may be no mental affection whatever. A man may be unable to converse from loss of power to co-ordinate the movements of his tongue and lips (*aphemia*), in which case there may be no impairment of intelligence. On the other hand, he may be unable to converse owing to disease of what is known as the speech centre. This may show itself in disturbance of the power of remembering words for the purpose of expression of ideas by speech (*amnesia*, *aphasia*), or by writing (*agraphia*). The last-mentioned affections are usually associated with paralysis of the right side, and the intelligence is apt to be somewhat affected, though in a very varying degree.

To revert once more to the great natural division which was, early in this chapter, remarked to be common to both law and medicine, it may be observed that while, as above mentioned, medicine knows "amentia," or congenital weak-mindedness, on the one hand, and, on the other, insanity, or mental unsoundness arising at some time after the mind has become partially or fully developed; in the eye of the law, all persons of unsound mind (*non compotes mentis*) are either "idiots" or "lunatics."*

* It should be noted in passing that the Lunacy Act, 1890 (see sec. 341), includes idiots under the term "lunatics;" but at the same time it should be mentioned that idiots are the subject of separate legislation, which is contained in other Acts.

An “*Idiot*” has, at least since the time of Coke, meant in law, one who from his birth has had no understanding, and is accordingly presumed by law to be never likely to attain to any. In *Tuke's Dictionary of Psychological Medicine*, however, it is stated (*sub voce* “Idiocy in its Legal Relations,” at p. 666, and old writers are there cited to bear out the statement) that the term “idiot” in early days was not confined to idiocy “*a nativitate*” (*i. e.* the congenital idiocy of law), but extended to fatuity which had commenced subsequently to the birth of the party.

A “*Lunatic*” has, at least since the time of Coke, meant in law, one who naturally possessed understanding (or reason), but has since lost it. The word “lunatic” is a barbarous word, derived from the late Latin, which conveys the idea that the condition of the patient varies with the moon. The idea was once generally received ; that sage of the law Lord Eldon, nearly a hundred years ago (in *ex parte Cranmer*, 1806), passed upon it ridicule which was duly chronicled by his reporter, the faithful Vesey ; while some more modern scientific men [see *Pope on Lunacy*, 2nd edit., p. 16] have contended that it is not altogether so absurd as was at one time supposed, though at present this theory is not received. It may be pointed out that our English system of law appears to have had, originally, and in its very early days, no distinguishing name at all for persons who, though born with ordinary capacity, in after life fall into a state of hopeless weakmindedness. In the earliest statute which we possess upon the subject, the distinction drawn is between “*fatuus naturalis*” on the one hand, and on the other, the man “*qui prius habens memoriam et intellectum non fuerit compos mentis suæ.*”

From what has been said it appears that, on the one hand, the “*amentia*” of medicine, and the “*idiocy*” of law sufficiently correspond ; while, on the other hand, the legal term “*lunacy*” nearly corresponds with the insanity of medicine ; the terms “*lunacy*” and “*insanity*” alike including all forms of insanity other than “*amentia*” and congenital imbecility.

It has, in short, been sufficiently demonstrated that medicine and English law at least agree in substance, even

though they may not employ similar terms; for they both divide all mental weakness into two great classes—the broad distinction made by each science being founded on the difference between, on the one hand, extreme congenital weakness, or even almost total absence of mind; and, on the other hand, disturbance (or perturbation) of a fully or partially developed mind.

Medicine is a universal science, and its nomenclature tends to become everywhere the same. But though no one entire system of law is universal, there are certain principles of jurisprudence which are common to all legal systems. Amongst others the principle of the division of all mental disease which is, in substance, founded by medicine upon the difference between mere congenital weakness or absence of mind on the one side, and the perversion of a fully or partially developed mind upon the other side, finds a place in all the best known and most scientific legal systems. The civil law subdivided “dementes” into “mente capti” (that is to say, persons “defective in understanding,” just as “*oculis captæ talpæ*” will rise to the memory as meaning “blind”) on the one hand, and “furiosi” on the other. In modern times, the Prussian Penal Code recognises “insanity and idiocy,” while the Civil Code of that country divides insanity into “mania” and “idiocy.” The French Penal Code appears to stand alone in possessing only the single classification, which it calls “*démence*.”

The two great divisions of mental disease which have been already pointed out, namely, “*amentia*” (or “Idiocy”) on the one hand, and “insanity” (or “Lunacy”) on the other, may therefore be taken to be those which are at present in substance, and in some form, almost universally recognised. Though not identical in name, they are founded on the same basis, and they accordingly find a place both in medicine and in the English legal system.

To this extent it is thought that—notwithstanding the warning in *Tuke's Dictionary of Psychological Medicine* (sub-title “Evidence (law of) in Relation to Insanity,” at p. 461), that lunacy (in the sense in which the word is often used by legal text writers) and insanity are not convertible terms—it may be said that the divisions of the subject

respectively employed by medicine and by law closely correspond.

But at this point medicine and English law at present part company. Medicine, regarding insanity as a mental state resulting from disease of the brain, looks at the mind as a whole, and accordingly considers unsoundness in any one part or faculty of it as likely to render the entire mind unsound ; but English law, on the other hand, to some extent at any rate, recognises what it calls a "partial insanity." The phrase "partial insanity" sometimes means an insanity which is only "partial" as regards time, and exists at one moment and not at another ; and when used in this sense it is better described as "intermittent insanity" ; at other times the expression "partial insanity" is used to denote an insanity which the law supposes to be confined to one subject, and to the set of ideas connected with this one subject ; or in other words to affect only one particular portion or compartment (as it were) of the mind, which is treated as being made up of several distinct parts. From the date of *Greenwood's case* in 1790 [*Greenwood v. Greenwood*], it has not been possible to say precisely to what extent and in what manner the doctrine of "partial insanity" (the words "partial insanity" being loosely used in both the senses explained above) is adopted by English law.

In criminal jurisprudence the doctrine of "partial insanity" has received full recognition and a liberal interpretation ever since the date of *MacNaughten's case* in 1843. In criminal cases it has, ever since that date, been impossible to question its existence as a legal doctrine. It has, from that time, been no longer possible to contend in such cases for the view of the old law that every man must be judged by his conduct *taken as a whole*, and that it must be determined whether, thus regarded by the light of his entire behaviour, a man falls on the one side or on the other of the line which divides sanity from insanity, and ought to be for legal purposes classed among the sane or among the insane. Nor can this view be maintained, even although (as undoubtedly was the law) there be added the requirement that, in criminal cases, to excuse from responsibility, some connection between the insanity and the criminal act must

be clearly shown. The view just indicated was probably the basis of the English law of insanity as it existed before the cases (*Greenwood's case* and *MacNaughten's case*) to which reference has just been made. But after these cases the question whether it was the proper basis for the law came to be much discussed, and the discussion can hardly be said perhaps to be even yet finally concluded.

Between sixty and seventy years ago physicians of the French School, who had devoted especial study to mental disease, began to teach the doctrine of "*Partial Insanity*." By the expression "partial insanity" they meant an affection of the emotions which dominates a portion only of a man's acts and conduct, and not the whole of it. To this, Esquirol, one of their number, had given the name of "*Monomania*," a term which had subsequently come into general use, and was then almost universally adopted, though (as we have before stated), it is one which scientific men do not now employ to the same extent as formerly. In 1843 MacNaughten shot Mr. Drummond under circumstances which will be mentioned hereafter (see "Criminal Responsibility," *post*). MacNaughten's defence was undertaken by Mr. Cockburn, Q.C., who, even at that date, occupied a commanding position at the Bar. Mr. Cockburn was of mixed origin, being partly English and partly French; spoke the latter language with fluency, and was well acquainted with the literature of both countries. At MacNaughten's trial he boldly, yet cautiously, set up in the prisoner's defence this theory of "partial insanity," but contrived so to do it that it never was rejected by the Bench. He did not refer, by name, either to Esquirol or to any of the French School—references which might, in the then state of the public mind, have much prejudiced his case. But, veiling what he was about by skilfully-chosen extracts from Erskine's speech at the trial of Hadfield in 1800, for shooting at George III—by a quotation from an American writer on insanity named Ray—and by ostensibly pressing the old doctrine of English law, that an insane person could not be held criminally responsible if, at the moment of the act with which he was charged, he did not know right from wrong—Mr. Cockburn managed in reality, but covertly, to introduce the theory of "partial

insanity," held by Esquirol and the French School. MacNaughten, he said, was a "monomaniac," and not at the moment responsible for what he was doing. The *Times* (6th March, 1843) thus reports the principal passage in his speech bearing upon this point: "The learned gentleman then read an extract from Lord Erskine's defence of Hadfield, in which it was laid down that insanity might prevail upon a particular point, and that the disease called monomania exculpated an individual from the guilt of crime committed under its influence. The learned gentleman then proceeded to quote an extract from the works of Mr. Ray. The effect of the extract was that parties might be insane upon a particular point, and yet be as sane as the rest of mankind on all other points, and that an act committed under that particular delusion *was one for which they were no more answerable than if all their mental faculties were deranged.*" While Mr. Cockburn thus adroitly instilled the theory taught by the French School into the ears of the jury, his medical witnesses (see their evidence detailed *post*, "Criminal Responsibility") brought MacNaughten well within the rule that a man is not criminally responsible if, at the time of the act charged against him, he does not know right from wrong. In the result the prisoner was acquitted; rightly it would seem.* The acquittal was in reality the triumph in criminal jurisprudence of the theory of "partial insanity," and of Mr. Cockburn and its medical adherents. But, adroitly as Mr. Cockburn had dealt with the matter, the public was alarmed. The verdict was given on the Saturday, and on the Monday following, and in the same paper which reported it (*Times*, 6th March, 1843), there appeared a letter reflecting this alarm, signed "Justus," given those honours of "leaded type" which the *Times* only accords to very distinguished writers, and disparaging the term "invented" by his counsel to designate MacNaughten's act, viz. "homicidal monomania"—in plain English an irresistible "impulse on the part of the maniac for

* For some years later (in 1865) Sir Charles Hood, who had MacNaughten under his care at Bethlem Hospital for about ten years, gave evidence before the Capital Punishment Commission to the effect that MacNaughten was unquestionably insane, and that his mind had gradually decayed from the ordinary course of brain disease. [See *Hansard*, 3rd series, vol. lxvii, p. 288.]

blood." The *Times* itself, in a leading article on the subject, while professing acquiescence in the verdict, asked "where sanity ends and madness begins?" and "What are the outward and palpable signs of one or the other?" and concluded its remarks by saying: "It is but poor consolation to reflect that a fellow-man has been prematurely cut off from the duties and employment of a well-spent life by the unsuspected blow of an assassin, who "laboured under a morbid delusion of which murder was the outcome." The same evening Lord Brougham drew attention to the subject in the House of Lords, expressing his intention of bringing in a bill on the subject of the responsibility of "monomaniacs," if the Government did not. Such a bill was indeed actually brought into the House of Commons on the 7th March by Sir V. Blake, although never subsequently proceeded with. About the same time some lines by the poet Campbell appeared in the *Times* (8th March, 1843), in which the writer, amongst other things, said that the people of England were "at the will of the merciless man," and

"The Insane—

They're a privileged class, whom no statute controls,

And their murderous charter exists in their souls;

Do they wish to spill blood? They have only to play a few pranks;"

while the lines ended—

"For crime is no crime when the mind is unsound."

The House of Lords, in the end, put several questions to the judges (see the chapter on "Criminal Responsibility"), which pointedly raised the question of the effect of "partial insanity" in criminal cases. The judges after taking over three months for consideration, answered these questions in terms which accepted and dealt with this theory. After this, the doctrine that "partial insanity" may relieve an accused person from criminal responsibility, grew to be received as part of the criminal law.

In testamentary cases the doctrine of "partial insanity" was, at all events for some years, not recognised. For Lord Brougham, who had (as we have seen) at once placed himself at the head of those who were discontented with the virtual acceptance, in criminal cases, of the doctrine of

“partial insanity,” and had openly said in the House of Lords that he would have hanged both MacNaughten and Martin (whose case is stated *post*, chapter on “Criminal Responsibility”), and presumably Hadfield also, determined that he would discredit the whole doctrine as far as he could, and that it at least should not prevail in the cases in question. He had, indeed, always consistently repudiated the doctrine, to whatever class of case it was sought to be applied. Moreover, Mr. Cockburn, who had secured its adoption in criminal cases, was at that time but a rising advocate, while Lord Brougham was himself Lord Chancellor of England. Accordingly in 1848 the latter made the case of *Waring v. Waring* an opportunity for re-affirming what he thought was the doctrine which had prevailed in English law till the change which had been introduced into criminal jurisprudence by *MacNaughten’s case*. Said Lord Brougham in *Waring v. Waring*: “We must keep always in view that which the inaccuracy of ordinary language inclines us to forget, that the mind is one and indivisible; that when we speak of its different powers, or faculties, as memory, imagination, consciousness, we speak metaphorically, likening the mind to the body, as if it had members or compartments, whereas, in all accuracy of speech, we mean to speak of the mind acting variously, that is remembering, fancying, reflecting, the same mind in all these operations being the agent. We therefore cannot, in any correctness of language, speak of general or partial insanity; but we may most accurately speak of the mind exerting itself in consciousness without cloud or imperfection, but being morbid when it fancies; and so its owner may have a diseased imagination, or the imagination may not be diseased, and yet the memory may be impaired, and its owner be said to have lost his memory. In these cases we do not mean that the mind has one faculty, as consciousness, sound; while another, as memory or imagination, is diseased; but that the mind is sound when reflecting on its own operations, and diseased when exercising the combination termed imagining, or casting the retrospect, called recollecting.

“This view of the subject, though apparently simple, and almost too unquestionable to require, or even to justify, a formal

statement, is of considerable importance when we come to examine cases of what are called, incorrectly, "partial insanity," which would be better described by the phrase "insanity," or "unsoundness" always existing, though only occasionally manifest.

"Nothing is more certain than the existence of mental disease of this description. Nay, by far the greater number of morbid cases belong to this class. They have acquired a name, the disease called familiarly, as well as by physicians, "Monomania" on the supposition of its being confined, which it rarely is, to a single faculty or exercise of the mind; a person shall be of sound mind, to all appearance, upon all subjects save one or two; and on these he shall be subject to delusions, mistaking for realities the suggestions of his imagination. The disease here is said to be in the imagination; that is, the patient's mind is morbid or unsound when it imagines; healthy and sound when it remembers. Nay, he may be of unsound mind when his imagination is employed on some subjects, in making some combinations; and sound when making others, or making one single kind of combination. Thus he may not believe all his fancies to be realities, but only some, or one: of such a person we usually predicate, that he is of unsound mind only upon certain points. I have qualified the proposition thus on purpose, because, if the being or essence, which we term the mind, is unsound on one subject, provided that unsoundness is at all times existing upon that subject, it is quite erroneous to suppose such a mind really sound on other subjects. It is only sound in appearance; for if the subject of the delusion be presented to it, the unsoundness, which is manifested by believing in the suggestions of fancy as if they were realities, would break out; consequently, it is as absurd to speak of this as a really sound mind (a mind sound when the subject of the delusion is not presented) as it would be to say, that a person had not the gout because, his attention being diverted from the pain by some more powerful sensation by which the person was affected, he, for the moment, was unconscious of his visitation.

"It follows from hence that no confidence can be placed in the acts, or in any act, of a diseased mind, however appa-

rently rational that act may appear to be, or may in reality be. The act in question may be exactly such as a person without mental infirmity might well do. But there is this difference between the two cases; the person uniformly and always of sound mind could not, at the moment of the act done, be the prey of morbid delusion, whatever subject was presented to his mind; whereas the person called partially insane—that is to say, sometimes appearing to be of sound, sometimes of unsound mind—would inevitably show his subjection to the disease the instant its topic was suggested. Therefore we can with perfect confidence rely on the act done by the former, because we are sure that no lurking insanity, no particular, or partial or occasional delusion, does mingle itself with the person's act, and materially affect it. But we never can rely on the act, however rational in appearance, done by the latter, because we have no security that the lurking delusions, the real unsoundness, does not mingle itself with, or occasion, the act. We are wrong in speaking of partial unsoundness; we are less incorrect in speaking of occasional unsoundness; we should say that the unsoundness always exists, but it requires a reference to the peculiar topic, else it lurks and appears not. But the malady is there, and as the mind is one and the same, it is really diseased while apparently sound, and really its acts, whatever appearance they may put on, are only the acts of a morbid or unsound mind."

The meaning which twenty-two years afterwards, Cockburn (who had in the meanwhile become Chief Justice of England), in the well-known case of *Banks v. Goodfellow* (1870) attributed to the judgment of Lord Brougham, from which the above extract is taken, was that *any* insanity on the part of a testator would vitiate his will.

This, however, does not appear to be necessarily the interpretation of Lord Brougham's remarks, and they possibly may have been, and indeed, when the previous history of the subject, and Lord Brougham's attitude with regard to *MacNaughten's case* are considered, probably were, intended to be no more than a re-assertion of the principle that every man must be judged by the law by his conduct as a whole, and taken to fall either into the class of the sane

or the insane accordingly, and that it is not proper to judge of any particular act taken alone, and looked at apart from everything else in its author's life.

Whatever his meaning was, what Lord Brougham said was from thenceforth accepted as being law, at all events in will cases, till 1870, and, however it be read, it plainly excluded the doctrine of "partial insanity" in testamentary cases. In 1870, however, Lord Brougham was dead. Cockburn, as has been mentioned, had become Lord Chief Justice of England. In this latter capacity he, in *Banks v. Goodfellow* (1870), extended the doctrine of "partial insanity" to will cases, just as he had as an advocate twenty-seven years previously obtained its formal recognition in criminal jurisprudence. He replied to Lord Brougham's doctrine as to the indivisibility of the mind (cited *ante*, p. 19) as follows:

"Unable to concur in [the doctrine laid down in *Waring v. Waring*], we have felt at liberty to consider for ourselves the principle properly applicable to such a case as the present. We do not think it necessary to consider the position assumed in *Waring v. Waring* that the mind is one and indivisible, or to discuss the subject as matter of metaphysical or psychological inquiry. It is not given to man to fathom the mystery of the human intelligence, or to ascertain the constitution of our sentiment and intellectual being. But whatever may be its essence, everyone must be conscious that the faculties and functions of the mind are various and distinct as are the powers and functions of our physical organization. The senses, the instincts, the affections, the passions, the moral qualities, the will, perception, thought, reason, imagination, memory, are so many distinct faculties or functions of the mind. The pathology of mental disease and the experience of insanity in its various forms teach us that while on the one hand all the faculties moral and intellectual may be involved in one common ruin, as in the case of the raving maniac, in other instances one or more only of these faculties or functions may be disordered while the rest are left unimpaired."

Accordingly, from the year 1870, the law as to testamentary capacity entered upon a new phase. Its prin-

ciple had originally been that a man must, as a citizen, be looked upon as either sane or insane. Lord Brougham, in 1848, re-asserted this principle, and refused to admit in will cases the doctrine of "partial insanity," which the decision in *MacNaughten's case* had, five years earlier, introduced into our criminal jurisprudence. Cockburn, in 1870, obtained the recognition of the principle in testamentary cases.

It remains to consider how English law regards the doctrine of "partial insanity in connection with contracts."* Upon this subject it did not become fully developed until the year 1880. As early as 1848 it was, indeed, settled by the then Court of Exchequer Chamber, that insanity on the part of one contracting party does not make the bargain void unless the other was aware of its existence. But in 1880 occurred a case of *Jenkins v. Morris* in which the Court of Appeal held, in confirmation of the view which had been previously taken in the same case by Vice-Chancellor Wickens, that "insanity" on the part of one of the contracting parties, even where the other contracting party is aware of it, does not invalidate a contract if it be only "partial," and such as not to destroy the insane party's ability to make a business-like and sensible contract upon the subject.

From the above outline of the history of the doctrine of "partial insanity" in English law, it will be seen that, according to the views which at present predominate in our jurisprudence, the doctrine is, as a doctrine of law, generally recognised. No opinion at all is intended to be, in the smallest degree, indicated here as to whether these views, which thus accept the doctrine of "partial insanity" will be ultimately held to be correct, or incorrect. At the same time, both the extent and the manner of their application appear to be, in point of law, alike in criminal matters,† in testamentary cases, and possibly under other heads, open to

* The law as to insanity in its relation to contract generally is considered *post*, in the chapter on "Civil Responsibility."

† It is, indeed, doubtful whether the opinions of the judges given to the House of Lords in *MacNaughten's case* are of any binding authority at all in point of law; as to this see "Criminal Responsibility," *post*.

further discussion, and to reconsideration, in either the House of Lords or the Privy Council. Whether they are so in the Court of Appeal is more doubtful, as that court appears to have *assumed* their correctness, without having this point argued out before it. Such views could, of course, be dealt with (as has been more than once proposed) by Act of Parliament. As they at present exist, they may be summed up by saying that they make the validity or invalidity of the acts of those who suffer from a partial insanity depend, in will cases, upon whether such acts are or are not dominated by the partial insanity, and also upon similar considerations, both in criminal cases and in questions as to contracts.

The *evidences* of the existence of insanity are, of course, infinitely various. Generally speaking, the weight of the evidence existing upon this subject, in each particular case, must be left for consideration in that special case. Even then, it can only be properly weighed by mental experts. At the same time, some remarks as to one or two very common evidences of insanity will not be out of place.

Absolute proof of the existence of insanity in a person is afforded whenever he is found to have "*Insane Delusions*" prevailing in his mind. The truth of this proposition will be the more obvious when it is framed in the converse, or negative form. Thus stated, it simply is that no sane person is subject to insane delusions. Sir John Nicholl said in 1831 [in *Wheeler v. Alderson*] that there had never yet been a case in which insanity had been held to exist without delusion. It must not, however, be taken (at any rate, not as a scientific fact) that there cannot be insanity without delusion. So far, indeed, as the law is concerned, what Sir John Nicholl said in 1831 appears to be equally true at the present day, since there seems to be as yet no recorded case in which the law has treated a person as insane without having first received that absolute and convincing evidence of his insanity which is afforded by proof of the presence of delusions in the patient's mind. But it is nevertheless a scientific fact recognised by all medical men that insanity may, and as a fact often does, exist without delusions (and a very dangerous form of insanity it is), so that the absence of delusions is in

truth no proof whatever that the party is not insane. It may, however, be reasonably asked, "What is a delusion?" Many beliefs as to facts may be in truth erroneous and mistaken, but still not insane delusions. We have the authority of the late Mr. Justice Talfourd [in *R. v. Hill*, 1851], who was well known for his extensive reading, that "some of the greatest and wisest of mankind have had particular delusions;" and he points out that we read, on Lord Campbell's authority, that "Socrates had . . . one spirit always prompting him." A "delusion," as understood in connection with insanity, has been described as "a belief in facts in which no rational man could have believed" [Pagan, *Med. Jur. of Insanity*, quoted *Pope*, 2nd edit., p. 2]. This description was adopted by Sir John Nicholl in the well-known case of *Dew v. Clark* (1826). It is, however, not very satisfactory, and somewhat savours of an attempt at definition which is *idem per idem*. It is, moreover, open to the further criticism, pointed out by Lord Brougham in the judgment of the Privy Council in *Waring v. Waring* (1848), that it states a consequence as a definition. An "insane delusion" may (as pointed out in the passage in the judgment just cited) be more accurately defined as "a belief of things as realities which exist only in the imagination of the patient." Another definition of a delusion was given by Sir John Nicholl in 1831, in the case of *Wheeler v. Alderson*, in which he said that "a delusion is the fancying things to exist which have no existence, and which fancy no proof or reasoning will remove." It has been, perhaps, best defined as "a belief in something that would be incredible to sane people of the same class, education, or race as the person who expresses it, this resulting from diseased working of the brain convolutions" [*Clouston's Mental Diseases*, at p. 244].

The detection of delusions is sometimes a matter of great difficulty. They often fail to show themselves, merely because the train of thought which calls forth their expression does not arise; because the cord which, if struck, would at once give utterance to them, is not touched. Moreover, a patient is sometimes extremely astute in concealing his delusions. This is especially likely to be the case where he

has been previously put upon his guard. For instance, in the time when Lord Mansfield was on the Bench there arose a case of which Erskine, in defending Hadfield, is stated to have said that he had received the following account from Lord Mansfield. "A man of the name of Wood," said Lord Mansfield, "had indicted Dr. Munro for keeping him as a prisoner (I believe in the same madhouse at Hoxton) when he was sane. He underwent the most severe examination by the defendant's counsel without exposing his complaint, but Dr. Battye, having come upon the Bench by me, and having desired me to ask him what was become of the *princess* whom he had corresponded with in cherry-juice, he showed in a moment what he was. He answered that there was nothing at all in that, because having been (as everybody knew) imprisoned in a high tower, and being debarred the use of ink, he had no other means of corresponding but by writing his letters in cherry-juice, and throwing them into the river which surrounded the tower, where the princess received them in a boat. There existed, of course no tower, no imprisonment, no writing in cherry-juice, no river, no boat; but the whole the inveterate phantom of a morbid imagination. I immediately," continued Lord Mansfield, "directed Dr. Munro to be acquitted, but this man Wood, being a merchant in Philpot Lane, and having been carried through the City in his way to the madhouse, indicted Dr. Munro over again, for the trespass and imprisonment *in London*, knowing that he had lost his cause by speaking of the princess at Westminster, and such," said Lord Mansfield, "is the extraordinary subtlety and cunning of madmen, that when he was cross-examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the bar, and all the authority of the court, could not make him say a single syllable upon that topic, which had put an end to the indictment before, although he still had the same indelible impression upon his mind, as he signified to those who were near him, but conscious that the delusion had occasioned his defeat at Westminster, he obstinately persisted in holding it back." From a note in the State trials it appears that the evidence which Wood had given at Westminster

on the first trial had in the end to be proved by a shorthand writer who had taken it down on that occasion.

The actions of a patient who is suffering from delusions are frequently determined by them, his mind often reasoning correctly and logically on the basis of the supposed, but non-existing, facts which form the basis of the delusion. The deductions which he draws are, however (as we shall see more fully in the chapter of this work treating of "Criminal Responsibility") not always such as the law permits.

Very common forms of insane delusions are for the patient to imagine that he or she is being slowly poisoned, or is being tormented with electric contrivances, used by enemies for that purpose, with or without the aid of a man or men employed to work them ; or that he or she (though really well and comfortably off) is on the verge of extreme poverty, or is in the most straitened circumstances ; or that he or she hears the voices of men or spirits, exhorting to a certain course of action ; or even sees persons or spirits, or poisonous vapours, which are visible to no other eye.

Insane delusions, when connected, as they often are, with religion, are called "religious delusions," and common instances of these delusions are for the patient to believe that he or she has committed the unpardonable sin (or sin against the Holy Ghost) ; or is the most wicked person in the world ; or, on the contrary, is one of God's Elect or one of His great Prophets. Delusions of this latter class are often accompanied by an anxious and marked study of the Bible. This latter characteristic of insanity will often, too, be found to have its origin in, or to give rise to, a morbid delusion that Holy Writ commands the sufferer to inflict some grievous bodily injury upon himself. The command of our Saviour, "If thine eye offend thee, pluck it out," is, for instance, frequently taken literally, and the patient who begins by fancying that he has put an organ to an evil use, will often end by destroying it altogether.

It is not always easy to trace the connection between a patient's delusion, and his actions. Two excellent examples of this may be gathered from Dr. Maudsley's book on *Responsibility in Mental Disease*, and a third may be instanced from a non-scientific book entitled *Gheel, the City of the Simple*,

which gives a popular description of that well-known place. In the first of the instances cited, the patient laboured under the not uncommon delusion that he was our Saviour. This delusion may be in itself, and in some cases is, perfectly harmless. Indeed, one of the present writers was for many years acquainted with an insane person who was merely afflicted with this peculiar delusion, but who could never be shown to have allowed it to, in any way, influence the actions of his dreamy daily life. In the case cited by Dr. Maudsley (at p. 218), however, a similar delusion led the patient to one day knock down a cab-horse in the street with an axe. At first sight, the connection of ideas (even in the mind of an insane person) between this act and this delusion is not apparent. But the key to it is that the patient considered that the world did not pay sufficient attention to his birth and mission, and fancied that this eccentric act of thus destroying the horse would attract its due attention. In another case (which is also mentioned by Dr. Maudsley) the patient suffered from the delusion that he was a windmill. Harmless as such a delusion appears, it nevertheless led him to burn down the house in which he was residing under the care of a keeper or attendant. The connection between the patient's delusion and that act, in the insane man's mind, was that there were no windmills in that locality, and that he, in consequence felt solitary, while he thought that if he burned the house down he might be removed to a neighbourhood where there were more windmills.

The case referred to in *Gheel, the City of the Simple*, is also an instructive one. Here Balsac, a man said to have been in private life one of those fussy miscalled philanthropists, with whom most of us are acquainted, busied himself to obtain the release of a patient confined as insane, but in whom he had hitherto failed to detect insanity. He succeeded in his object. To celebrate his success, he invited his *protégé* to breakfast with him. The newly-released one plaintively inquired, "Oh, but could you not make it supper?" "Why?" asked his liberator. "Why, my dear sir," was the reply, "you see I am the Moon, and if I were seen about in the early morning it would excite surprise"! [See *Gheel*, pp. 130—133.]

Some stress has been laid upon the necessity of proving an immediate connection between the act under investigation and the insanity, because the tendency of their education is to make medical men regard every case from a scientific point of view, and to think that patients are legally insane, forgetting that the insanity of strict science is often not what the law calls insanity. In general, to satisfy the law, not only must a man's mind be imperfect, from a scientific point of view, but its imperfection must have led to some insane conduct. For instance, no one could, in point of law, say that a man was a lunatic, merely because he (contrary to all ascertained scientific fact) chose to hold that the world is a flat surface in the form of a parallelogram. But he might well be held legally insane, for the purpose of that act, if it were proved that he had done some extravagant act in pursuance of this belief—as for instance, if he had, out of revenge, injured or disinherited a favourite child, because the child had failed (as the testator imagined from perverseness) to take him to the edge of the world to look over; or if he had murdered a man on the same imaginary grounds; or if he had squandered his means in pursuance of such, or a similar insane idea, while those dependent on him were utterly neglected.

“Delusions,” properly so called, must be carefully distinguished from mere “*Hallucinations*” and “*Illusions* ;” which may be due simply to physical causes, and are therefore not necessarily indications of insanity. An “hallucination” is a sensation referred by the patient to an external object, which *has no existence*. An “illusion” is a sensation arising from an external object, but misinterpreted by the patient. Both “hallucinations” and “illusions” are sometimes referable to such physical causes as, for instance, defects of either hearing or vision. It must be added that both hallucinations and illusions are common in insanity, and may give rise to delusions.

Although the presence of insane delusions, in all cases, affords absolute proof of the existence of insanity, there are various other evidences of its presence. It must be therefore pointed out that, in ascertaining the presence or absence of insanity in any individual, not only must his

condition in respect of delusions be inquired into, but the state of such other faculties, as memory, power of attention or application, capacity for thought, ability to reason or to judge correctly, must be ascertained. Further inquiry must be made for the presence, or absence, of hallucinations, illusions, or other sensory disturbances; for evidence of loss of normal volitional control, or of the presence of emotional disturbance, and of such deviations from normal conduct as are very commonly present in the insane—such, for instance, as destructiveness, untidiness in dress, neglect of personal cleanliness, refusal of food, indecency or dirty habits, attempts to injure self or others. Reference has been made before to the importance of alteration of the moral character as an evidence of certain forms of mental disease. The loss of power of comparison is, in many cases, an incident of the condition of insanity. Indeed, the late Dr. Cullen described insanity as a disorder of the power of comparison or judgment. This, as a definition, is imperfect, and its insufficiency was conclusively shown by the late Dr. Conolly. Nevertheless, it is a fact that, in the mind of an insane person, a slight accidental touch is often misunderstood, and taken as a violent blow deserving of the most condign punishment. A person suffering from the delusion that he is being poisoned, will, too, in many cases regard the gift of anything to eat (even of a rare delicacy) as a most suspicious circumstance. The peevishness and suspiciousness of weak-minded persons, and of those suffering from senile decay, is proverbial.

The *Handwriting* presents peculiarities in certain cases of insanity, notably in general paralysis, as well as in the chronic stages of alcoholism and in states of nervous exhaustion occurring after fever. It possesses a certain peculiar shakiness, which experts, who have made the subject their especial study, will easily recognise. Of course, it is not meant to suggest that every shaky or bad handwriting is an indication of insanity. Indeed, on this hypothesis, many of our greatest men, both in law and in medicine, might be suspected of insanity. The handwriting of those of the insane who are suffering from general paralysis, in particular, undoubtedly often, in addition to shakiness, presents marked

and well-known peculiarities incidental to that disease. The matter is too intricate a one, however, to be entered upon in further detail here. Those who are interested in it will find an able and interesting article, on the subject of "Hand-writing of the insane," by Dr. Savage, with fac-simile of various specimens of such hand-writing, in *Tuke's Dictionary of Psychological Medicine*, vol. i, at p. 568.

It may further be mentioned that *the matter contained in a patient's letters* frequently betrays his mental condition. On the other hand, many undoubtedly insane persons are able to write coherent and reasonable letters.

Heredity, where the facts of a case leave room for the theory of insanity, and where there is ground for suspecting the existence of hereditary insanity, sometimes affords evidence which may be of extreme importance as an aid in determining whether insanity exists or not. Even in such cases it is not, indeed, in itself conclusive. But it is an important factor to be regarded along with the other circumstances when considering cases of doubtful sanity, and may, moreover, often turn the scale when the whole of the facts are being weighed. The principle of heredity is, in its most obvious form, universally recognised, and, indeed, it is only at the risk of being reproached with stating mere commonplaces, that it can be pointed out that everyone knows that the offspring of a mammal will be a mammal, while that of a bird will be a bird, and that of a fish will be a fish. Moreover, offspring always inherits *some* of the properties of *each* of its two parents. Consequently, while the offspring (if any) of two different kinds of animals will still be an animal, it will be an animal of a mixed kind, or what is generally called a "hybrid,"—such as a mule. But, further, as is well known to every breeder of horses or stock, even the more delicate peculiarities of each of its parents will generally be reproduced in the offspring of two different strains of the same animal. From these commonplace observations it is easy to see that the offspring of progenitors, one or both of whom are insane, may well inherit insanity. This may result even at a distance of generations, springing from persons originally insane. Indeed, there is always a tendency to what is popularly called

“throwing back,” which is known to scientific men by the term “atavism.” The possession by a person of a direct ancestor, who was insane, plainly shows the possibility of insanity existing in that person also. So also does a person’s possession of an insane uncle or cousin, since it points to the possibility of some more or less remote common ancestor having been insane. The first great law of heredity accordingly is the law of inheritance, and its operation is plain enough. But the principles of the second great law of heredity are not so clear. This law is that the organisation of the offspring depends upon the *suitability* of each pair of its progenitors to one another. For the offspring not only takes some of the affirmative attributes of each parent, but will be deficient in qualities which neither of the parents has the power to transmit. Again, a recourse to the commonplace will help to make the principle under consideration plain. Some animals—for instance, all hybrids or mules—are wholly and altogether unable to transmit *any* of the attributes which they themselves possess to descendants. Everyone will admit that the whole includes every part. Consequently, as it is possible for a creature to be wholly incapable of transmitting *any* of its attributes, it is equally possible for a creature to be incapable of transmitting *certain* of its attributes. Usually the offspring derives from one parent what the other has been unable to transmit to it. But when it happens that *each* of the offspring’s parents (though perhaps possessing it in his or her own person) is incapable of transmitting to offspring any one given attribute—say, for illustration, good sight or soundness of lung—it is plain that the offspring will be wholly and altogether deficient in that particular attribute. It is thus that two persons, neither of whom is deficient in mental soundness, may have offspring who possess no mental soundness—in other words, are insane. The principles of heredity cannot, with any advantage, be further considered here. As practical instances of the operation of those principles it may, however, be noted that the offspring of persons, each of whom is of a peculiar nervous temperament, is not unlikely to be insane.

Practical teachings of the doctrines of heredity tell us

that those persons who *each* have had a near ancestor who was insane, though they have had no common ancestor who was so, are likely to have insane offspring. *A fortiori*, two persons who have had a near *common* ancestor who was insane, are still more likely to have insane offspring. Accordingly first cousins who had a common grandfather who was insane certainly ought not to marry each other. But mere consanguinity, unless insanity exists on each side, or unless there has been a succession of inter-marriages between relations, of which they are the offspring (for constant and repeated inter-marriages deteriorate the power of healthy transmission), will not necessarily result in insanity in the offspring. In a word, in seeking to trace whether insanity is hereditary, it is always important to ascertain, both whether there was insanity in *any* ancestor of the person as to whom we are inquiring, and also to learn whether there is any evidence that any two of his or her ancestors were so physically unsuited to each other (*e. g.* from nervous temperament) as to render it likely that they were jointly incapable of transmitting a sound mental constitution to their common offspring. It should be carefully noted that it is common for a child of a marriage which is likely to produce insane offspring to break down during the period of adolescence, and about that time to develop well-marked insanity. Oxford, who was obviously the offspring of such a marriage, and whose case will be found detailed on a later page (*post*, on the "Criminal Responsibility of the Insane"), affords a good example of this.

This rough general outline of some of the principles of heredity will, it is hoped, be found to be of some practical utility in tracing cases of inherited insanity. It need hardly be said that it is only intended to furnish those who are investigating a case of this sort with some hints as to the directions in which to look, and is not intended to supersede the absolute necessity of applying in every such case to skilled scientific medical experts, who alone can do justice to so difficult a subject.

As a rule, the mere fact of the probability of the existence of inherited insanity, either without proof of other facts also pointing to insanity, or accompanied by proof of facts which do

not afford room for the theory of insanity, will be insufficient. The defence of insanity cannot be set up with success under such circumstances. A good illustration of this is afforded by a case of *R. v. Williams* (which was tried at Exeter, at the Spring Assizes for Devonshire, in the year 1893, and is reported in the *Western Morning News* of March 11th, 1893), for a murder committed at a place called Petertavy. It appeared in that case that Williams, being jealous of his sweetheart and of a young man whom she preferred to himself, bought a revolver, inquiring at the time whether it would kill a man. On the next Sunday he threatened both the lovers, and on that same evening laid wait for them, and shot them both dead on their way from church. After doing this he tried first to shoot himself, and then to drown himself in the adjacent River Tavy. Both these attempts having failed, and Williams having been taken to an infirmary, he, while there, made a detailed statement to his father of all that had taken place. Hereditary epilepsy was set up as a defence on his behalf, and it was even proved that Williams himself had, as an infant, suffered from fits which were of an epileptic character. But, as in *Bowler's case* (which will be discussed hereafter, "Criminal Responsibility"), the evidence of premeditation of the criminal act, and of perfect recollection of such act after its commission, was totally inconsistent with epilepsy. Williams was accordingly found guilty, and afterwards hanged.

It is not uncommon, in ascertaining the family history of an insane person, to find that, although there may be no evidence of insanity in any other member of the family, yet there is evidence of the existence in the family of other forms of functional disorder of the nervous system, such as epilepsy, hysteria, chorea (St. Vitus's dance), brain fever, somnambulism, neuralgia, migraine, or certain forms of paralysis or of such conditions as alcoholism or morphia habit.

We may now turn from the consideration of the evidences of insanity to remark upon some matters which are closely connected with that disease.

All insanity is divided by those who adopt the doctrine of "partial insanity" (explained *ante*, p. 15) into "*general insanity*" and "*partial insanity*." By "*general insanity*"

is meant a mental condition in which the whole mind is unsound, and the unsoundness exists with regard to multifarious subjects — perhaps, indeed, in relation to most things. By “partial insanity” is meant a mental condition in which the mind is certainly unsound as to one or two subjects, but the unsoundness does not manifest itself upon the generality of matters.

On later pages of this work the history of the modern doctrine of “partial insanity” and the question of how far effect ought to be given to it in questions as to criminal responsibility or testamentary capacity, will be found fully considered. But, whatever opinions may ultimately prevail on this much vexed subject, it is of much practical importance to medical and other witnesses to have it most clearly brought to their minds as a fact beyond controversy that English law clearly holds, and long has held, that there are different “degrees of insanity,” and that a person may be insane for one purpose, and yet not insane for another. This doctrine of degrees of insanity runs through the whole of English law, and may for convenience’ sake be called the doctrine of degrees of insanity, to distinguish it from the modern doctrine of “partial insanity” (to which reference has just been made) as applied to criminal responsibility and to testamentary capacity. The old doctrine of “degrees of insanity,” which has long been established in our law, is that a person may be insane as regards one set of objects, but not insane as regards another. This doctrine only distinguishes between different classes of acts. According to the doctrine of degrees of insanity a man may be so insane as not to possess testamentary capacity, yet not so insane as to be a fit subject for detention and treatment. The modern legal doctrine of “partial insanity” seeks, on the other hand, to distinguish not merely between different classes of acts, but between different acts of the same class. The doctrine of partial insanity says that a will must be held invalid when the terms of it are clearly proved to have been dictated by insane delusions, but that a will by the same individual, if it appear that his insane delusions cannot be shown to have in any way influenced it, shall be held to be good. English law, in pursuance of the doctrine of degrees

of insanity, makes its tests of insanity no less than eight in number. It will not permit any one general test of sanity, but jealously inquires with regard to each particular act as to the competency with regard to that special matter of the person whose mental condition is in question. We even find that the tests of insanity are not the same in all cases in which it is sought to place a person under restraint; but that they vary according to the particular sort of restraint which it is desired to impose. Moreover, there are two tests of insanity in civil cases, yet a different one as to criminal responsibility; the competency of an insane person to give evidence in a court of law resolves itself into a simple question as to whether he may be considered fairly trustworthy when speaking of the matters as to which he is to depose; while the testamentary capacity of such a person is now made to depend, in effect, upon whether his insanity was or was not such as to have influenced the testamentary act.

A correct appreciation of the nice distinctions which English law thus makes between different degrees of insanity ought ever to be borne in mind by medical practitioners when they are called upon to give evidence in a court of law. For this reason it will be worth while to point out in detail the questions which English law in each case propounds as a test whether a patient is legally "insane" or not. Such a question may arise with reference to the alleged insane person's (A) Treatment; (B) Civil rights; (C) Criminal liability; or (D) Capacity either to be a witness, or to make, or revoke, a will. As to treatment, there are three separate tests; the application of each varies according to what is the exact legal form in which the general question is raised. The matter for determination when a question arises under any one of the four heads just mentioned is not the same as it would be if it arose under any other one of them. It may, moreover, even vary a little from that which would have presented itself under the very same head, had the resort been to a different kind of legal procedure.

In substance, the controversial questions which may thus arise for decision are (as has already been incidentally mentioned) no less than eight in number. They may, as just

indicated, be divided into four groups. Thus treated, they are respectively as follow :

(A) *On a question whether a person is so insane as to render him a subject proper for treatment as insane—*

(1) If it be desired to have him found lunatic by inquisition : the legal question is, whether he is *so* unsound of mind as to be incapable of managing himself and his affairs.

(2) If it be desired to place him in an asylum : the legal question for determination is, whether he is a proper person to be taken charge of and detained under care and treatment.

(3) On an indictment against a person for a violation of the Lunacy Laws, by illegally receiving a lunatic : the question simply is whether the person so received was or was not “insane,” or of unsound mind, in the sense in which the word is medically and scientifically used.

(B) *On a question as to the civil rights of an alleged insane person—*

(4) In all civil cases to which an alleged insane person is a party, other than actions *by* such a person for what is called false imprisonment (as to which see below), and actions *against* him on a contract : the question whether such person is insane or not has no legal importance whatever, and need not be discussed ; being, in point of law, wholly immaterial. This is equally the case whether the action be one *by* the alleged insane person, or be one *against* him.

(5) If a person has taken upon himself to restrain an alleged insane person without complying with the formalities prescribed by the Statute Law (as to which see *post*, Chap. III of this part as to “Statutory Orders,” and Chap. IV thereof as to “Violations of the Lunacy Laws”), and the person so restrained afterwards bring an action against him for what is in law called “false imprisonment,” the person who has so acted can only justify what he has done by showing that the plaintiff was dangerous to himself or others : and accordingly in any such action for “false im-

prisonment," the question will be whether the alleged "lunatic" was so insane as to be dangerous to himself or others.

- (6) In an action *against* an insane person on an alleged contract made by him, the legal questions are: first, whether such person was, as a fact, so insane as to be unfit to make a contract of the kind in question; and next, whether his insanity was known to the other contracting party (see as to this *post*, on "Civil Liabilities").

(c) *On a question in a Criminal Court as to the criminal liability of an alleged insane accused—*

- (7) The legal question is: whether, at the time when the act in question is alleged to have been committed, the accused "knew right from wrong" with regard to such act (as to this test see *post*, on "Criminal Responsibility").

(d) *On a question as to the capacity of an alleged insane person to make or revoke a will—*

- (8) The legal question is: whether the testator was, at the time of the alleged testamentary act, suffering from such insanity as may reasonably be supposed to have influenced (or, in one view of the law, which did actually influence) such testamentary act (on this subject see *post*, on "Testamentary Capacity").

The eight different questions which may thus, in England, be raised as to whether a person is legally insane, in other words is "insane" so far as regards the particular act under consideration, must, of course, not be in any way confused with the division of the insane into the two great classes—idiots and lunatics—which is (as we have seen) in theory made by the English law. That on a question of alleged insanity there should be no less than eight different tests possible, with regard to any one of which a witness may be called upon to testify, or, in the case of a medical or other skilled witness, to express an opinion, is a fact the practical importance of which can hardly be over-estimated. Both those getting up the evidence necessary for the trial of a case, and those giving evidence at such trial, should never for an instant forget that all the evidence should be directed to

the very point at issue in the matter, which may, according to the circumstances, thus assume any one of the eight forms which are indicated above.

At the same time, it is not a little confusing that, by English law, the questions which may offer themselves for determination can be presented in any one of such numerous different forms. In other legal systems the questions which are possible are less in number. For example, in German forensic medicine it is said (*Pope*, p. 20, note *e.*) that they are but two, namely (1) civil responsibility (or “*Dispositions-fähigkeit*”) and (2) criminal responsibility (or “*Zurechnungsfähigkeit*”). The English legal system is the only one in which the questions are so intricate and minute. The reason for this extreme particularity of English law has already been pointed out and explained (*ante*, p. 36). It does not seem possible, without upsetting the whole structure of the English law as to insanity, for the number of these questions to be materially reduced, or to be even made identical under each of the four groups into which we have pointed out that its eight heads may be divided. It will be observed that their multiplicity chiefly arises from there being three separate tests as to liability to treatment as a lunatic, and also three (which might possibly be reduced to two, but certainly could not be made less) as to civil rights.

The heads of criminal liability and of capacity to make or revoke a will know but one single test each, and it is not easy, therefore, to see how any reduction can be effected in connection with those matters.

Before leaving the subject it may be noted that the law in criminal cases, *primâ facie* presumes every person to be of sound mind [*per* Lord Denman, C.J., in *R. v. Oxford* (1840)]. The mere *suggestion* that a person is insane will not be enough; the burthen of proving that he actually is so, always rests upon those by whom this suggestion is made [see Alison, *Princ. Crim. Law of Scotland*, 659]. But no such presumption arises in other cases, and especially not in testamentary ones (as to which see *post* upon “*Testamentary Capacity*”).

The above are some of the chief points which appear to

require notice in connection with insanity. But our remarks upon the subject would not be complete unless they were concluded by some observations as to certain conditions which *closely resemble insanity itself*, but yet are not insanity, among which are feigned or simulated insanity.

Eccentricity is perhaps the one of these conditions which most closely resembles insanity. Indeed, it is often hard to distinguish between mere eccentricity and insanity, or to say where eccentricity ends or insanity begins. The two may sometimes, however, be distinguished from one another by observing that the merely eccentric man is usually consistent with himself; while in insanity there is an obvious change of character. A sudden development of "eccentric habits," therefore, may betoken an attack of insanity. Again, an eccentric man may perfectly well know (often does) that his conduct is eccentric, and not in accordance with the usages of society, which he may profess to scorn and set at nought; but an insane person very commonly (though not invariably) cannot be convinced that his conduct is not most usual and proper. Every asylum contains numerous patients who, while they know and believe that all the *other* inmates of the place are insane, think that they have themselves been sent there for some special purpose; as, for example, to make a scientific study of the habits of the insane, or to find out and record some great natural fact, which can only be learnt by close observation of large bodies of men. On the other hand, many insane persons are aware of their unsound condition.

Eccentricity is a matter in dealing with which it was said by Sir Herbert Jeener Fust, in *Mudway v. Croft* (1843) that "the Court always labours under great difficulty. . . . It has frequently been attempted to furnish some general rules which might serve as guides to Courts of Law in the investigation and decision in cases of this description, but all endeavours to do so have failed; every case has some distinguishing features; each case must be governed by its own peculiar circumstances." The learned judge then, after referring to the discussion in *Dew v. Clarke* (1826), said that, as he understood, the result of that case was that, in considering the conduct of eccentric persons, it is "abso-

lutely and essentially necessary to look to the peculiar circumstances of each individual case ; and to judge from the whole character of the person, whose mental capacity is the subject of inquiry, what was the state and condition of the mind of that individual, not only with respect to the immediate time, but the intermediate stages of his life." The learned judge went on to cite, with approval, a long passage (sec. 92) of Dr. Ray's *Treatise on the Medical Jurisprudence of Insanity* (published in 1839), in the course of which that writer remarks that "many men in the full enjoyment of health are remarkable for peculiarities and idiosyncrasies of thought and feeling which contrast strongly with the general tone and usages of society ; but they are not on that account to be held as insane, because the singularity for which they are distinguished is, with them, a natural quality, and not the product of disease ; and from the very unlikeliness of their manifestations to the modes of feeling and acting of other men, such persons are, in common language, said to be eccentric ;" while he says that in insanity it "is the prolonged departure, without an adequate external cause, from the state of feeling and modes of thinking usual to the individual when in health, that is a true feature of disorder in mind." And he arrives at the conclusion "that the same acts which would constitute insanity in one eccentric individual might not do so in another ; for the reason that the mind and habits of the two persons might be differently constituted."

A remarkable case of eccentricity, not amounting to insanity, is given in *Collison on Lunacy* (vol. i, p. 390). One Jervoise was found, by inquisition, to be a lunatic. At a date within the period during which the verdict of the inquisition jury found he was insane, Jervoise had executed a deed, granting an annuity to a kept mistress of his. Payment of this annuity having been stopped after the inquisition, an action was brought against Jervoise's executors to recover the arrears. The trial came on before Lord Ellenborough at a period when Sir Vicary Gibbs was Attorney-General (and therefore somewhere between 1807 and 1812) ; and he appeared for the plaintiff. In support of the annuity deed, it was proved that it had been prepared by a solicitor ;

he and his clerks gave evidence of Jervoise's competency at the time when it was executed ; it was shown to have been attested by a Dr. Murray (Jervoise's own physician) and a Mr. Furneaux ; while Lord Hood, who was a witness at the trial in support of the grantor's competency, concluded his testimony with a solemn declaration of his conviction that Jervoise, although eccentric in his habits, mode of life, and appearance, was fully competent to confer the annuity. On the other hand, among Jervoise's eccentricities were the following. He used to ride about the country on a donkey, wearing a white hat, blue trousers, red morocco slippers, a white linen shirt and neither coat nor waistcoat, although sometimes a waggoner's frock ; the carriage in which he travelled usually contained what he called his "conjurator," which was a favourite cooking utensil in which he dressed his food ; and the carriage was sometimes filled with old china, silver plate, pots, pans, and a bunch of large keys, and a number of pick-locks ; while it was itself long left unpainted, until one Sunday Jervoise suddenly ordered three women servants to paint it, and when this was done went for a ride in it, with the paint still wet ; the carriage linings, too, were mended by passing fishwomen, with old petticoats belonging to his servants ; he had holes cut in the ceilings, because he had taken a dislike to staircases, as unsightly, and had accordingly had them removed, and after this used himself to go upstairs by a ladder passed through these holes, while he obliged his servants to get up through them to their rooms by means of ropes and pulleys ; and he at the close of his career took an aversion to the presence of any servants at all, after which he had the door of his room cut in two, so that the lower part formed a bar, which servants were never allowed to pass, his food being placed on a table left outside, which he hauled into his room by an arrangement of ropes and pulleys ! Sir Vicary Gibbs, on the part of the plaintiff, contended that these eccentricities were to be classed under the head of folly, rather than that of madness, saying (after Horace) that "the man had the right of riches to commit them." Lord Ellenborough instructed the jury that an inquisition (finding lunacy in a man) is only *primâ facie*, and not conclusive, evidence of insanity, and

that they must give a verdict for the plaintiff if they thought that Jervoise, when he granted the annuity, "had such possession of his intellects as rendered him perfectly aware of what he was doing, and had followed the dictates of his mind when fully possessed of reason." The jury (apparently with Lord Ellenborough's approval) found in favour of the plaintiff, or, in other words, said that the grant of the annuity was valid.

Those interested in the subject of eccentricity will also find in the *Journal of Mental Science* for October, 1874, an account of "Lucas the Hermit of Redcoat's Green," and in the *Century Magazine* for November, 1889, the story of the foundation in New England, by a vegetarian named Allcott, of a sect who professed the doctrine of "Newness." Their founder, Allcott, possessed an asceticism and eccentricity (including doing without clothes) which appears to be an exaggeration of the ways of a Mediæval hermit.

As instances of eccentricity which have been wrongly mistaken for insanity it may be mentioned that the introducer of umbrellas into England is traditionally reputed to have been considered eccentric; while many years ago the fact that a man did not shave is said [*Tuke's Dictionary of Psychological Medicine*] to have been actually accepted as an indication of insanity.

In studying both *Jervoise's case*, and the other examples of eccentricity which have been referred to, it will be noted that while the presence of insane delusions is the only *conclusive* proof of insanity, in none of the cases in question was there any proof of the existence of such insane delusions.

Hysteria, which we must next consider, is a word derived from the Greek (ὑστέρα = uterus), it having been long supposed that it was a condition which had some connection (especially in females) with the generative organs. In *Tuke's Dictionary of Psychological Medicine* (p. 628) it is said that it is "less a disease, in the ordinary sense of the word, than a peculiar constituted mode of feeling and reaction." Both men and women suffer from it. It is not insanity, yet has a very marked mental side; and many persons suffering from what is commonly known as "hysteria" are on the border-land of insanity, and may become insane.

Delirium, again, is a mental condition which, while it lasts, is essentially the same as that which constitutes insanity. The word "delirium" is, however, used in a much more limited sense than insanity, and signifies merely that *temporary* mental disturbance, which is the result of certain physical causes, such as diseases of, or injuries to, the head, diseases of a febrile kind, or even the introduction of poisons into the system.

Drunkenness is an example of delirium due to the last-named cause. Excessive quantities of alcohol operate as a poison, and produce a delirium. These, at first, produce a state of acute mental disorder, which itself has two distinct periods. The first period is one of undue excitement, and the next one of abnormal depression. A person who is in a state of drunkenness, is really for the time insane. Accordingly, he is, for many purposes, placed by the law in the same position as an insane person. Thus, he cannot, while in such state, make a valid will; neither can he (if his condition is known to the other contracting party) enter into a contract, which will bind him against his will; and he cannot be guilty of forming an actual criminal intent, although an act may be sometimes of such a nature that intent or malice is inferred by law from the mere commission. A malice of this kind is called by lawyers "implied malice" or "malice in law." The doctrine of criminal responsibility by "implied malice" or "malice in law" is a little hard to grasp. It may be illustrated thus: The law *infers* intent, or perhaps malice, from the mere use of a deadly weapon; so that, for instance, if a man take up a gun and shoot another, the law *implies* that he killed his victim maliciously, inferring "malice" from the mere use of such a weapon. This appears to be what is really meant by the familiar saying that "Drunkenness is no excuse for crime." In other words, if a man who is drunk is *betrayed* by his condition into breaking the law, he must take the consequences. On the other hand, there are certain cases in which a particular law is not broken at all, unless there be an actual evil intention (or "actual malice," as it is called) in the evildoer's mind. An instance of this occurs in the case of assaulting "with intent to murder." A drunken man who in a quarrel used

a stick upon another violently, would be found guilty of "assault" only, if the jury thought that he committed the act without any actual *intention* at all. Persons who have indulged in continued and habitual excesses in alcohol are liable to fall into a state of delirium, which may last for some days and even weeks; and this state may even continue during some such period, notwithstanding that during that time no excessive quantities of alcohol are taken. This is called *delirium tremens*. In point of law, a person who is suffering from delirium tremens may, if thereby rendered dangerous (as will probably happen), be by the original Common Law, and without any Statutory authority, restrained as if he were insane, and may even be sent to an asylum if his condition require it; while, on the other hand, he possesses the same irresponsibility for criminal acts as an insane person.

Hypochondriasis is a condition closely allied to insanity, and may pass into it. The main characteristic is a tendency to dwell upon, and to be anxiously concerned about, the functions of one or other, or several, of the organs of the body, when there is no sufficient evidence of organic disease, or perhaps there is evidence of some very slight disease the importance of which is greatly exaggerated by the patient. This condition may pass into what is known as hypochondriacal melancholia, which is a well-recognised form of insanity, patients suffering from which are frequently suicidal.

Feigned insanity is as old as the days of Ulysses and of King David. We have no contemporary record of the feigned madness of Ulysses. Homer and the old Greek poets make no mention of it. The first notice of it is contained in the writings of Lycophron the Grammarian, who flourished under Ptolemy Philadelphus, that is, about B.C. 30. It is also alluded to by one Hyginus, an author of fables,* who lived about the time of Ovid. The case of

* A commentator upon Lycophron gives a version of the legend which, with the addition of the few words added in square brackets by the present authors, is (in English) as follows: "They say that Ulysses when the Greeks compelled him to join the army against Troy feigned that he was mad, and that having yoked an ass and an ox he began ploughing [sowing salt as he did so]; but

David furnishes the oldest extant record of feigned insanity. The Bible tells us (1 Samuel xxiv, 12, 13) that David, when he became afraid of King Achish, "changed his behaviour before them, and feigned himself mad in their hands, and scrabbled on the doors of the gate, and let the spittle fall down upon his beard," by which means he deceived Achish, and subsequently effected his escape. In modern times, feigned insanity is by no means unknown, either to medical men or to lawyers. When the conduct of a living person who appears to be insane becomes the subject of investigation, it is sometimes a matter of keen controversy whether the apparent insanity is real or assumed.

In England, the object with which insanity is most commonly feigned is to escape from sudden responsibility involving any very serious consequences. In countries subject to the conscription, the design in making the pretence often is to escape from military service. Even in England, it is believed that the increase of insanity is now causing considerable anxiety to the military authorities. In all countries the ends for which insanity may be feigned are infinitely numerous, varying with the particular circumstances of each case.

No more difficult and delicate task ever falls to the lot of a medical practitioner, than to have to pronounce whether apparent insanity is real or feigned. From the observations contained in *Taylor's Medical Jurisprudence*, and in the words of Professor Caspar, the great German authority on forensic medicine, it may be gathered, that whatever form of insanity is presented, particular attention should, in cases where it is suspected that the insanity is simulated, be directed to the following points :

Under any circumstances inquiry should be made as to whether the person has any *motive* for pretending to be insane. Assuming the existence of a possible motive for feigning insanity, inquiry should next be made as to the

Palamedes put him to a test, for taking Telermachus, the son of Ulysses, he placed him down in front of the plough, when Ulysses, being afraid that he should hurt his boy, stopped his plough, and was known by the Greeks to have been feigning his madness." The fable is told by Hyginus in similar terms (*Hyg.*, Fab. XCV).

time when the alleged appearances of insanity first presented themselves.

For instance, where the possible motive is to escape from criminal responsibility, did they first appear after the person had been actually accused of the crime or previously to any charge being made against him? Dr. Taylor well observes that “no one feigns insanity merely to avoid suspicion.” It should also be inquired *how* such appearances first showed themselves. Insanity *usually* develops itself gradually, though there are some instances in which the attack develops with great rapidity, though it has not been absolutely sudden. Indeed, in some rare cases,—such for instance as the mere fact of a person being accused of a crime,—insanity may be developed suddenly.

Then, again, careful inquiry should be made whether any possible *causes* exist for the insanity which after all is the result of disease;—a fact which should never be forgotten. In cases of real insanity *some* existing cause can usually be traced. Full and careful inquiry should therefore be made into the patient’s previous personal history, both physical and mental. Even in the absence of anything else, if an hereditary predisposition to insanity can be traced, this solitary fact must be carefully weighed and taken in connection with the other circumstances of the case (see also *ante*, p. 34).

Moreover, the expression of an alleged insane person should be closely observed. In the generality of cases, and certainly in those that are acute, there is some deviation between the expression of a person who is in health, and that of the same individual when he has become insane.

While the general expression is thus deserving of attention, Professor Taylor has remarked that “observation of the countenance, especially of the eye, while others are conversing on matters affecting the reputed criminal, will show whether there is an intelligent understanding of what is said in his presence or not.”

Careful watch and scrutiny should be employed to see if any *inconsistency* in the patient’s conduct or statements can be detected. Thus, it is probable that the patient is an impostor if one form of insanity be simulated at one time;

and another at another ; though, even in real insanity, the mental condition may change from time to time. So he also clearly is feigning insanity if his statements as to the origin and cause of the disease be not consistent with experience, or if the part of insanity be in any way "over-acted."

Accordingly it is usually (though an epileptic may forget a criminal act while remembering other events closely connected with it in point of time) a symptom of imposture when the person professes to be unable to answer questions of importance (for instance, any question relating to the crime with which he is charged, or with any other matter under investigation), while he recollects other matters well ; where he has no answer to give to any questions, important or unimportant, about it, and on the subject being broached immediately turns from it, begins talking about the weakness of his head ; or when on the subject of conversation becoming dangerous, the supposed insane person, who has been sensible up to that time, suddenly becomes conveniently irrational. Even experienced deceivers not infrequently betray themselves by some inconsistency of behaviour or speech. With a view of guarding themselves against any mischance in this latter particular (conversation), they, indeed, sometimes assume *absolute silence* (a part which is not difficult). In such cases the only available plan is to watch closely and carefully for the person to accidentally betray himself (as sometimes will happen) by being taken off his guard, and then dropping a chance but appropriate word. There is a well-known story of a man having been detected as a deserter from military service by another man going suddenly behind him and giving a word of command, on hearing which the deserter immediately and involuntarily fell into the corresponding position. Dr. Blandford (p. 444 of edition 4 of *Insanity and its Treatment*) says, "Comparing a true with a feigned case, I may say generally that a real lunatic when approached by a stranger appears at first rather better than worse, and more on his guard ; he tries to bring his wits together and understand what is going on. But a sham lunatic when we go to him redoubles his efforts to seem insane ; he is more energetically noisy, idiotic, and maniacal."

An efficacious mode of detecting that insanity is feigned has been found in the use of either a cold shower bath or (where dirty habits have been assumed) of a bath raised to a sufficiently hot temperature. When one is morally convinced that the case is one of imposture, the application of a galvanic battery or the administration of a dose of tartar emetic will often produce positive proof. The responsibility for the use of such means of detection should, it need hardly be said, always be undertaken by a medical man.

In addition to the foregoing general remarks as to feigned insanity, the following observations are respectively applicable (as the case may be) to cases where dementia or other forms of insanity have been assumed.

Dementia (or weakness of mind) is generally the result of apoplexy, disease of the brain, previous attacks of insanity, chronic alcoholism, epilepsy, or old age. If a patient, supposed to be suffering from dementia, be discovered to have any connected ideas, inconsistent with the weakness of mind which is assumed, it becomes, of course, evident that there is an attempt at imposture.

The observations which have been already made as to maintaining a close personal observation of the patient, especially of his features and eyes, and as to endeavouring to entrap him into inconsistencies, will be found particularly advantageous in cases of assumed dementia.

Dr. Stahmann has pointed out that . . . "an impostor will be dirty in his cell or bed, but rarely in his person, while in real insanity the patient is usually dirty in both."

The best known modern case in which it has been questioned whether dementia was real or assumed, is the famous *Mordaunt case*, of which Professor Taylor gives the following summary :

"Among modern cases in which that form of insanity known as dementia was alleged to have been feigned, is that of Lady Mordaunt (*Mordaunt v. Mordaunt*, Divorce Court, February, 1870). In consequence of a confession made by the lady soon after her confinement that she had committed adultery with certain persons, her husband took proceedings against her for a divorce. At the date at which she was served with notice of the writ, the 30th April, 1869, it was

alleged that she was insane, and that, from mental incapacity, she was unfit or unable to instruct an attorney for her defence. On the part of the husband, it was alleged that she was really fit and competent, and that the state of insanity was assumed in order to avoid the exposure of a public trial (*The Mordaunt Divorce Case, Official Report, 1870, p. 108*).

"Lady Mordaunt was confined on the 28th February, 1869, and on the 9th March she informed her husband that the child was not his. He treated this statement at first as a delusion, but from some circumstances which afterwards came to his knowledge he believed it to be true. The nurse, who remained with her a month, stated in her evidence that she had not observed the least appearance of insanity about her. Mr. Orford, who attended her in her confinement and until the 18th March following, deposed that there were no symptoms of puerperal mania or of fever, and there were no delusions. He considered her to be shamming on Monday, the 8th March, after her confinement, and more or less from that time until the 13th May. The only symptoms exhibited were silence and a fixed look. This witness saw her at Worthing on the 10th July. There was nothing then to lead him to believe that she was not in her senses. There was no sign of madness about her at any time. He had seen her recently. Her present state is that of a mind altogether gone. She cannot apprehend anything that is said to her (*Rep., p. 86*).

"Dr. Jones, another medical man, saw her on the 10th, 11th, and 12th, and up to the 26th March, and there were no symptoms of puerperal mania, or any sign that she was suffering from insanity. He saw her twice in April (on the 26th). Her mind was sane, and she answered questions rationally and reflectively. He saw her on the 12th May, and he believed her then to be generally sane. He again saw her on the 10th July. He could with difficulty get any answers to his questions, but when he did, they were rational. He saw her a few days ago. He could get no answer to a question. She threw herself on the hearthrug. He then thought that her mind was impaired.

"Dr. Tyler Smith, who was called as an expert, said that

there was no evidence of puerperal mania following the confinement, and there was an absence of insanity at the time spoken of by the two preceding witnesses. He saw Lady Mordaunt twice in December, 1869, and he saw no symptoms in her which might not easily have been feigned; but he would not go further than that. Assuming that she was not feigning, the appearances might be those of dementia.

“ [The evidence for the petitioner thus tended to show that from the date of the confinement until December, 1869, there was nothing to prove that Lady Mordaunt was insane, or incapable of exercising her mind.]

“ On the other side, evidence was adduced to show that Lady Mordaunt was incompetent. Three women, who had acted as attendants from the 17th May to the 31st August and subsequent dates, deposed to certain filthy habits, inconsistent with sanity. She destroyed her clothes, and there was a want of personal cleanliness.

“ Dr. Priestley saw her on the 6th May with Sir J. Alderson and Dr. Tuke. She was taciturn. She made no reply to questions. On the 16th, 17th, and 18th May, Dr. Priestley again saw her twice, with Dr. (afterwards Sir William) Gull. They agreed she was of unsound mind, and quite incapable of managing her own affairs. Her memory was almost annihilated. She could be made to understand only the simplest things. Dr. Priestley certified that she was ‘suffering from puerperal insanity accompanied by delusions,’ one of them being that she was still mistress of her own house, when her husband, Sir Charles, had permanently left her (*Rep.*, p. 14). Dr. Tuke saw her, with the former witness, on 6th May. He thought her suffering from puerperal insanity, tending to dementia. Neither of these witnesses had seen her since that date. Sir James Alderson saw her on the 6th May. His conclusion was that she was then of unsound mind. He again saw her, at Worthing, with Dr. Gull on the 3rd July. She had a vacant look, a fixed attitude, and scarcely gave a rational answer to any question. Sir J. Simpson saw her on the 14th April, 1869, and in February, 1870. He found her fearfully insane—a mere wreck and ruin of the mind—but in good bodily health. In his opinion she

was utterly insane, and the insanity had commenced before her confinement. In his view it was a case of puerperal insanity, in which state self-accusations of impropriety are common. Sir W. Gull saw her first in May, 1869, and several times subsequently. She had no mental comprehension, and rarely uttered two consecutive sentences. Saw her last in January, 1870. She was incapable of mind. The symptoms he saw might have arisen from any form of insanity. Some cheques were shown to this witness, which, with the exception of the two most recent, were, he said, reasonably drawn and carefully filled up. He considered the question of simulation, but could not arrive at an affirmative conclusion. The strongest evidence against simulation was, in his opinion, the uniformity of her condition and incapacity to take in ideas. Dr. George Burrows saw her, with Dr. Reynolds, on the 10th July, at Worthing, at the request of Sir C. Mordaunt's solicitor, and in company with her medical attendants, Messrs. Orford and Jones. He concluded she was then unable to give instructions to a legal adviser. She would only answer repeated questions. He thought her mind had been progressively deteriorating, and that she was then in a state of dementia. Dr. R. Reynolds put questions, but had to repeat them several times before obtaining answers. He could not arrive at any conclusion. He had seen her since several times under an Order of the Court. He thought there was either extreme disease or extreme shamming, and after all he had seen, he thought the former. He tried to detect simulation, but never saw any breach in her demeanour. In answer to the Court he said, 'It is an unusual case, and there are some points of contradiction in it, such as the amount of intelligence up to a certain point, coupled with the uncleanness, which is generally confined to extreme cases of dementia. She can play an air, and sometimes answer sensibly on common things, and can write letters. It was this inconsistency which for some time made him doubtful (*Rep.*, p. 18).

"Dr. Wood, who was appointed by the Court, saw her on the 18th September, and considered that she was then suffering from an arrest of mental power, not strictly imbe-

cility or dementia. It is impossible that any human being should have carried out such a system of deception as that suggested by the petitioner. Lady Mordaunt's conduct was invariably consistent, whereas the most practised artist would have been betrayed into tripping. Simulation would have been betrayed by inconsistencies.

"Puerperal insanity may occur during pregnancy, at confinement, or during lactation. In the majority of cases it is more or less progressive. It is possible that Lady Mordaunt, though suffering from mania, was sane at the time of and after her confinement.

"The verdict of the jury was to the effect that on the 30th April the respondent was totally unfit to instruct her attorney, and had been unfit ever since.

"In reference to this remarkable case, it will be perceived that the medical witnesses on both sides agreed that, at the time of the trial, and for some time previously, Lady Mordaunt was of unsound mind, but her mental condition from the date of her confinement to the 30th April was left untouched by the verdict, and can now be only a matter of inference from the medical evidence. The witnesses acting as attendants, who gave evidence of the filthy habits and her unreasonable conduct, came after this date, and therefore could throw no light upon her mental condition. Until after this date, no reasonable motive could be suggested for her feigning insanity. There was then a strong motive for preventing a public exposure by trial. It was in the three weeks following this date, during which she had to answer the citation served upon her, that she was seen and examined by the greater number of scientific experts.

"The medical opinions given by them, regarding her condition in the months of March, April, and May, are conflicting. At this time Mr. Orford, her usual medical attendant, observed nothing the matter with her mind, and believed that she was shamming; Mr. Jones, another medical attendant, agreed in this view, and said that her state was inconsistent with any kind of mania he ever saw. Dr. Tyler Smith, as an expert, confirmed these gentlemen in their opinion that the symptoms were not those of puerperal

insanity. Dr. Priestley, who first saw her nine weeks after her confinement, thought she was then suffering from puerperal insanity with catalepsy; Dr. Tuke—from puerperal insanity tending to dementia and from catalepsy. Sir J. Simpson saw her six weeks after her confinement, and considered her to be ‘utterly insane.’ Sir W. Gull thought that her symptoms might arise from any form of insanity. Dr. Burrows (in July) thought she was in a state of dementia. Dr. R. Reynolds said it was a case of extreme disease, or extreme shamming. He could not detect simulation. Mr. Harris, a surgeon of Worthing, saw her in May (May 22nd) and attributed her condition to puerperal mania. Mr. Hughes (August 25th) thought her case one of puerperal mania. She had no mind or memory, and was unable to converse. Dr. Wood (September) said that she was suffering from an arrest of mental power, not strictly imbecility or dementia. The learned judge, in his address to the jury, put aside all these conflicting medical opinions. He did not know a more difficult definition to express in words than that of insanity. There was, he thought, as much variety in mental, as in physical, disorder. Instead of asking them to say whether the lady was mad or insane, he would wish them to consider whether she was or was not in such a state of ‘mental disorder’ as to prevent her giving instructions. They found in the affirmative.”

Where one of the forms of insanity other than dementia is assumed, the following remarks may be usefully offered as being especially applicable, in addition to the general observations made on an earlier page.

It has already been pointed out that a person, who assumes the part of insanity, will very probably in some respects, and at some time *over-act* the part, but will at other times *under-act* it. In an assumption of mania it is very probable, for example, that he will be very noisy, and violent, when with others, but quiet when alone and off his guard. It is, too, probable that, if he be an impostor, he will be constantly declaring that he is insane. A certain judge, in the words of a quotation by the late Professor Taylor (edit. 4, 1894, p. 508), once said: “It may be safely held that a person feigning insanity will rarely, if ever, try to

prove himself sane, for he runs the great risk of satisfying others that he *is* sane, a conclusion which he really desires to avoid. But there is no better proof, in general, that the insanity (supposing other evidence of it to be strong) is real, than keen and eager attempts by the accused to prove that he is sane, and strong and indignant remonstrances against being held to be insane, although they would protect him against trial and punishment. A trial took place at the Chelmsford Lent Assizes, 1873, in which a clergyman was indicted for a violent and unprovoked assault on a policeman. When a suggestion was made that his conduct was that of an insane person, he protested strongly against the jury returning a verdict to that effect. He would not allow the defence to be set up for him. His conduct, however, in court, left no doubt that he was then of unsound mind, as well as when he committed the assault, and the jury in spite of his strong protestations, acquitted him on the ground of insanity. The Lord Chief Justice (the late Sir A. Cockburn) stated that this man had formerly been confined as a lunatic. The conduct of an impostor would have been the reverse of this. In a case which occurred in Edinburgh some years since, a doubt existed whether the person was feigning insanity or not. Those who were about him, and had charge of him in gaol, were satisfied from his clearness and apparent coherence that he was quite sane, and that what he exhibited was merely eccentricity or simulated attempts to act as a madman. Insane he certainly was, however, beyond all doubt ; but he fought the point of his sanity most bravely in court, and made very clear and quick remarks on the evidence of the medical men, who had no doubt of his insanity. When one physician, of great experience with insane persons, stated that he thought him quite incapable of giving information to counsel and agent for conducting his defence, he said instantly, "Then why did you advise me to apply to and see counsel and agents?"

Probably an impostor will, though assuming the part of a maniac, sleep soundly ; whereas a really insane person sleeps but little, and the sleep is disturbed, an insane person possessing powers of endurance and of dispensing with sleep, which an impostor does not simulate and is not able to

imitate. An impostor will also, although he may refuse food (a common symptom in some forms of insanity, which is accordingly sometimes assumed by impostors), rarely do so to the extent of having to be fed by artificial means. An impostor too, though he will talk loudly and constantly about suicide, will rarely commit any act which will seriously injure or inconvenience himself.

The close observation of the features, and especially of the eye, which in the general remarks already offered has been advised to be made in all cases where it is suspected that insanity is simulated, will again be found to be of especial practical utility in cases of assumed mania. This will more especially be the case if the practitioner, in making it, bear in mind a remark of Professor Taylor's that "the moveability of the features may be as rapid as the imagination is vivid; but when every feature may vary or be kept under control and be steady, the eye will still indicate the erring thought!"

Epilepsy is a disease which is frequently simulated. Indeed, amongst professional mendicants it is traditional to use a piece of soap, to produce an imitation of the well-known foaming of the mouth which accompanies true epilepsy. In a case within the knowledge of one of the writers, a man fell down amongst bystanders, apparently in a terrible epileptic fit. "Get a bundle of straw," exclaimed a gentleman amongst them, locally well known alike for his real kind-heartedness and his shrewdness. On its being brought, "Lay him down on it," said he. This was done. Then followed the seeming strange order, "Set it on fire." But this proved too much for the impostor, who at once sprang on his legs and ran off rapidly, finding the place literally "too hot to hold him." In this case, the gentleman by whom the order was given happened to have previously obtained proof positive that the alleged epileptic was an habitual impostor. The procedure is not one which is recommended for indiscriminate imitation, or for use as an experiment. Other modes of detecting sham epilepsy are familiar to practitioners.

Delusions, too, are a characteristic of insanity which are often simulated. When, however, an impostor pretends to

them, there will not seldom be a great variety, from time to time, in the delusions which he assumes.

It is a singular fact, that a prolonged assumption, and pretence, of any form of insanity, will sometimes, in the end, really produce actual insanity. The reason, probably, is that the prolonged strain upon the mental faculties, needed to sustain the imposture, is too great, and causes the mind to ultimately break down.

We have now considered some of the definitions of insanity ; some of the more common of its forms ; some of the evidences of its existence ; and some appearances which, though closely resembling it, are nevertheless not insanity.

It remains to observe that while the question of the existence or not of insanity is often a very difficult one, a jury is, except in cases arising under the modern Lunacy Acts, the tribunal to which the law now usually entrusts its decision. To entrust it, indeed, to a tribunal exclusively composed of medical experts might be objectionable, since their training and habits of thought perhaps tend to render them a little predisposed to what is vulgarly termed "make out every man to be mad." Indeed, any medical man who has to consider whether insanity does or does not exist, will always do well to be on his guard against this natural predisposition. On the other hand, juries require watching in the precisely opposite direction. They are naturally predisposed to act, in civil cases, upon the legal principle, strictly applicable only in criminal cases, that every man is presumed by law to be sane until the contrary is established. Accordingly, they will usually, on a commission, incline to finding the alleged lunatic to be sane ; and on a dispute as to a testator's sanity, to finding that such testator was sane, and that the alleged will is valid. In criminal cases they are, perhaps, a little disposed (especially where no one else has been injured by the alleged insane person) to give effect to the presumption of law that every person is presumed to be innocent till he is proved to be guilty ; accordingly, their inclination is to acquit on that ground a prisoner who is alleged to be insane. They lean still more to finding that one who has committed suicide was suffering from temporary insanity.

The tendency of juries in this latter direction is shown by their almost always returning a verdict of "Temporary Insanity" in cases of suicide if the evidence affords even the slightest excuse for so doing. Indeed, the law itself encourages a jury who are investigating whether a case is one of suicide or not, to find in favour of the act having been done under the influence of insanity. Its technical legal reasons for so doing are that suicide is a felony, and first there always is a presumption in favour of innocence, and secondly a felony formerly * involved a forfeiture to the Crown both of lands and goods, and every presumption must always be made against a forfeiture. Accordingly, it has long been settled that a jury are legally justified in finding a verdict of suicide upon very slight evidence, though they ought not to presume insanity only from the mere act of suicide [see *R. v. Salloway* (1685)]. And where a coroner's jury has found a verdict, it cannot be what is technically called "traversed," that is to say, formal proceedings cannot be taken to controvert it [see 1 *Ventr.*, 239].

A jury as usually constituted is often, however, not the best possible tribunal for trying questions of sanity or insanity. This may be said without the least disrespect to them, for the question of sanity or insanity is, in truth, a highly scientific one, and daily becomes more so. In the early days of our law a jury was, on the whole, the very best tribunal for the decision of every case which it was possible to obtain. But as science progresses the practice of submitting scientific questions to such a tribunal as a jury yearly becomes less common. Scientific questions are in these days commonly tried by a judge without a jury. Moreover, the judge has power in such a trial to call scientific "assessors" to his aid. It is suggested that where in a criminal trial the defence of insanity is set up, or on an inquisition a trial with a jury at present takes place, or where it is a question whether there existed such insanity as to take away testamentary capacity, trial by jury selected under a specially constituted commission would be a far better mode of trial than a trial by an ordinary jury. Such a commission might

* Not now; see the statute 33 and 34 Vict., c. 23.

be constituted somewhat as follows:—To try cases raising questions of insanity there might be a jury presided over by a permanent chief commissioner who should be either a medical man or a lawyer. When a commission was to be executed in any given neighbourhood, the chief commissioner should summon six jurymen from the locality, one of whom might belong to the same profession as the chief commissioner, two others to the legal or medical professions, according to whether the chief commissioner is, or is not, a member of either of them; thus ensuring that there should be neither a legal nor medical preponderance of opinion; the remaining three of the jurymen being persons from the neighbourhood possessed of certain special qualifications—such, for instance, as an University degree; an appointment as a justice of the peace; being in holy orders; or carrying on business as a banker. Questions of sanity, except those arising under the modern Lunacy Acts and tried by a Master in Lunacy, should in all cases be tried before this tribunal, prisoners on whose behalf the defence of insanity was set up being remitted for immediate trial by it. This tribunal, moreover, should sit in open Court, and the verdict of the majority of the jury should be accepted in cases where it was created by the casting vote of the chief commissioner.

But, whatever be the tribunal for determining it, the *status* and personal position in law of insane persons not only is, but must ever continue to be, a matter of the greatest practical importance to their medical advisers and to their solicitors and friends, as well as to themselves. The following pages are intended to deal with this subject, uncomplicated by any questions as to the effect of their insanity upon those possessors of property who fall victims to that disease. The subject of the personal position of the insane, to which attention is thus proposed to be confined in the following pages, naturally presents itself under four great heads, namely (I) Detention and Treatment, which will include detention and treatment (a) under the authority of the original Common Law, (b) under inquisitions, (c) under certificates or other modern statutory authority. (II) Maintenance. (III) Responsibility, (a) Civil, or (b) Criminal. (IV) Capacity (a) as witnesses or (b) to make or revoke a will.

PART I

DETENTION AND TREATMENT

PART I.—DETENTION AND TREATMENT

PRELIMINARY REMARKS

By the original Common Law of England—unaffected by the provisions of any statute,—on the one hand, the only mentally afflicted persons who could be subjected to restraint of any sort, or to detention and treatment as insane, were those who were so insane as to be dangerous to themselves or to others ; while, on the other hand, any person who chose so to do, was at liberty to restrain, and to undertake the detention and treatment of, such of the insane as fell within this description.* The elementary provisions of the Common Law have, however, been supplemented by many statutes. But those provisions of the Common Law by which persons who are dangerous to themselves or others may lawfully be restrained, are still in force, and reliance has to be placed upon them in cases which have not been brought within the provisions of any statute.

The circle of insane persons who may be subjected to detention and treatment has, on the other hand, been greatly enlarged by the statutes previously alluded to. The earliest of these statutes was probably passed [Staunforde, *Pr. Reg.*, 33] about the time of Edward I, although the earliest record we have of it is contained in the Statute of Prerogatives of 17 Edward II, cap. 9 and 10. By it, no special provision was made for the care and custody of the persons of the insane, but provision was made as to the lands both of idiots and lunatics. The exact enactments will be found set out in full in the next chapter of this part (on “Inquisitions”). This statute forms the foundation for

* The manner in which this right was often abused in old days is depicted in many novels, *e.g.* in Mr. Baring-Gould’s ‘*Mehalah*.’

the process of inquisition, which will be the subject of the second chapter of this part. Modern statutes, all of which have been passed since the accession of the House of Hanover, provide for the care and custody of the persons of the insane—whether private patients, or wandering or neglected lunatics, pauper or criminal lunatics, or idiots; and the latest of them is “the Lunacy Act, 1890,” as amended by the Act of 1891, which consolidates the provisions of many earlier Acts of Parliament. These modern statutory provisions will form the third chapter of this part of our subject.

The persons who are allowed to take charge of the insane are, on the other hand, now required by statute to be licensed by the Commissioners in Lunacy to undertake such duties and to perform them in the manner prescribed by the Lunacy Acts and under the supervision of the Commissioners in Lunacy, or in any case to report to the commissioners that a patient is under their charge. Violations of the law in these respects will form the fourth chapter of this part of the work.

CHAPTER I

DETENTION AND TREATMENT UNDER THE ORIGINAL COMMON LAW APART FROM STATUTE

INSANITY, as will have been noted already, received but scant recognition from the original English common law. This, indeed, permitted the restraint by others of such persons as were actually dangerous either to themselves or to other people, and allowed such restraint to be imposed upon them by anyone who chose to interpose and do so. It may further be mentioned that the original common law also took notice of the condition of a natural born fool, whom it styled an "idiot." Moreover, severe as it was, it mercifully held that one who committed an offence at a moment when he "did not know the difference between right and wrong" (a phrase which is explained *post* in chapter on "Criminal Responsibility") could not be held criminally responsible for it. The points above mentioned were, however, the principal ones—indeed the only ones—with regard to which the common law took notice of the existence of insanity. Indeed, it had not even a word to denote the condition of one who, having been born in possession of natural faculties of reason, had afterwards lost the use of them; though, as we shall see, such an expression was subsequently afforded by the invention of the (to the common law) imported word "lunatic."

Early systems of law are chiefly solicitous about the rights and prerogatives of the sovereign and the rights and incidents of fixed property. This is why it is that we find that provisions, which will be referred to in detail in the next chapter, were originally made by Parliament so early as the reign of Edward I (afterwards recognised by the Statute of Prerogatives, 17 Ed. II, cc. 9 and 10), to the effect that the sovereign should have the custody of the lands of idiots

during their lifetime, and a sort of stewardship of the lands of lunatics (as we now should call it) during their lunacy. But in the Statute of Prerogatives a lunatic was (in the absence, which has already been noted, of a single word to express the idea) described as "any that beforetime hath had his wit and memory who happens to fail of his wit" (*sicut quidam sunt per lucida intervalla*). The word "lunatic" (as to the derivation and meaning of which see *ante*, p. 13) first, indeed, appears upon the statute book, as a term signifying one who has become insane after birth, in the reign of Henry VIII (33 Hen. VIII, c. 20). The word also occurs in *Piers Plowman's Vision*, and in Wycliffe's Bible.

The very word "lunatic" being thus originally unknown to it, the English common law, as might have been expected, contained no provisions whatever for the care or treatment of the persons of those affected by insanity. All that it did with regard to them was to say (much in the same spirit that those in danger from a wild beast might, it was said, kill the animal) that one who became so mad as to be dangerous to himself or others might be restrained by any member of society who cared so to do.

The legislation which, in modern times (and since the accession of the House of Hanover), has provided the elaborate machinery which ensures due care and treatment being afforded to every insane person in England, will form the subject of a later chapter.

In the face of the protection afforded by this legislation no reasonable man would *willingly* undertake the detention and treatment of an insane person in reliance on the old common law, or in any way other than either under an inquisition under the early statute of Plantagenet days, or else under some more modern statutory provisions. But it sometimes happens that no attempt at all is made to resort to these the statutory provisions, or that, while it is attempted to act upon them, the formalities which they render necessary are not strictly complied with. In either of these cases it still becomes necessary to resort to the old common law. The provisions of this must therefore be now briefly recalled.

The rule of the Common Law that it is only a person of unsound mind who is actually "dangerous to himself

or others" that may be restrained, is quite clear and beyond dispute [see per Campbell, C. J., in *Fletcher v. Fletcher* (1859)]. In short, since, as has been already observed (*ante*, p. 2), the law looks to *conduct* only, the mere fact that a person is insane does not at common law justify the deprivation of his personal liberty so long as his *conduct* is not (in Lord Campbell's words) "dangerous to himself or others." If, however, the insane person really is "dangerous to himself or others," then it is equally clear that *anyone*, and not a relative only, may interfere to restrain him [see *Brookshaw v. Hopkins* (1778)]. The right to impose such restraint also exists where the patient is suffering from a fit of *delirium tremens*, equally as much as where there is actual insanity [see *Scott v. Waken* (1862); *Sym v. Fraser* (1863)].

The common law rights of restraining a dangerous lunatic it may be noticed are now practically rendered subject to a compliance with the provisions of the Lunacy Acts. For if restraint can be justified on such grounds as are above mentioned, the subject of it must (except in the case of a sufferer from *delirium tremens*) obviously be a lunatic. Therefore, notice to the Commissioners in Lunacy ought to be given, as in the case of "single patients in private dwellings," which will be dealt with hereafter in Chapter III of this Part, to which reference should accordingly be made. An omission to comply with the requirements of the Lunacy Acts is, however, only a statutory offence (as to which the Commissioners in Lunacy, in their discretion, might prosecute or not). Such omission does not in any way affect or lessen the common law right of restraint, and such a right may therefore be relied on even where the requirements which the Lunacy Acts superadd have not been complied with.

CHAPTER II

THE POSITION OF PERSONS WHO HAVE BEEN FOUND INSANE BY INQUISITION

IN the preceding chapter, it has been pointed out that the common law originally took no care whatever for the *persons* of the insane. It indeed gave society a rough protection against their violence by providing that anyone might restrain them if they became dangerous to themselves or to others; and, in mercy to the sufferer, it held that it could not criminally punish men who were so insane as not to know right from wrong.

It will have been inferred that the solicitude for the rights of the sovereign, and for the care of landed property, which is characteristic of all early systems of law, led, in very early times in our history, to a statutory amendment of the common law as to insanity. By "The Statute of Prerogatives," a famous enactment which was passed in the year 1324, and in the reign of Edward II (17 Ed. II, cc. 9 and 10), an earlier statute, which had been passed in the reign of Edward I, but which is now lost, was recited and recognised, and it was declared (a translation of the language employed will be better than a mere copy of the Mediæval Latin) that "The King shall have the custody of the land of natural fools, taking the profits of them without waste or destruction, and shall find them their necessities of whose fee soever the lands be holden. And after the death of such idiots he shall render it to the right heirs, so that such idiots shall not aliene nor their heirs be disinherited (c. 11). Also that the King shall provide when any, that before time hath had his wit and memory, happen to fail of his wit, as there are many *per lucida intervalla*, that their lands and tenements shall be safely kept without

waste or destruction, and that they and their households shall live and be maintained competently with the profits of the same, and the residue besides their sustentation shall be kept to their use to be delivered unto them when they come to right mind, so that such lands and tenements shall in no wise be aliened and the King shall take nothing to his own use; and if the party die in such estate then the residue shall be distributed for his soul by the advice of the Ordinary" (c. 12).

It will be seen that the provisions indicated above were plainly dictated by a solicitude for the rights of the sovereign and for the care of landed property, and not by any regard for the persons of the insane owners of the land. Any mention of the latter was merely made in connection with the land, which was the chief object of consideration, and because they were a kind of incident to, or excrescence upon this, which could not well be dealt with without some slight reference to its owners.

Legislation in this spirit was dictated by, and entirely in accordance with, the feudal principles which prevailed in that age. The great idea of the feudal system was that every piece of land furnished a given number of men for military purposes. Accordingly, the king, as the great military leader of the nation, was lord paramount of all the land in his kingdom. His barons or great lords held the lands in it by the service, or at the "rent," as it would now be called, of rendering their king certain military assistance in war-time. To enable them to render this, the barons in their turn sublet (or "sub-infeudated" as it was called) the lands which they held to tenants of their own, who had in return for them, to agree to owe military service to these barons themselves. Thus the king was indirectly entitled to all the military services of his own kingdom—in other words to the services which were (in effect) the rent by which the bulk of the land in the kingdom was held. Therefore where the tenant of any land was incapacitated, either by idiocy or insanity, from rendering the stipulated military services which ought to be borne by the land which he possessed, it was only right that the King being unable during that time to obtain the stipulated military services should

have the land itself back again so long as the tenant's incapacity lasted: and this view was carried into effect by the two statutes which have just been quoted.

Parliament, however, at the same time thought that though in strict theory there was no right to it, the king ought if he took back the tenant's lands to provide for the incapacitated owner of them, so long as his incapacity should last. In the case of an idiot this incapacity would in anticipation of law endure during the idiot's life; and it was accordingly provided that the king should hold the lands during the idiot's life, and be bound to maintain him during the same period; while no provision was made for his family because in law no one who was capable of having a family was an idiot. In the case of a lunatic there was always in the eye of the law a possibility that he would recover, so the lands were only given to the king for so long as the lunacy should last, and subject to his making due provision for the lunatic's family as well as for him, and rendering an account at the end of the period.

It will thus be seen that far greater profit was obtained by the Crown from the custody of the lands of an idiot than it obtained from those of a lunatic. In consequence juries, where they had an opportunity, always found that a man was a lunatic rather than that he was an idiot. The Crown, on the other hand, always preferred to treat an insane person as a "fool" (or idiot) rather than as a "lunatic."

The practice for the Crown to assume the custody of the lands of an insane person continued long after the original reasons for it had ceased to exist in consequence of feudal tenure having been abolished at the Restoration. Indeed, it continued to be regarded as a profit which was one of the sources of revenue of the Crown so late as the time when Blackstone published his *Commentaries* (1765), in which it is mentioned. In the more degenerate times of the feudal system, and not only in its later days but after its abolition, a mischievous practice grew up by which the Crown used to alienate its revenues to a favourite subject. Courtiers and great lords were in the habit of obtaining from the Crown a grant of these profits, and this explains the

frequent allusions to the practice of "begging a fool" (as it was termed) which abound in old writers. Thus Shakespeare, in *Love's Labour Lost* (act v, sc. 2), makes the Clown remark, "You cannot *beg* us, sir, I can assure you, sir, *we know what we do* (*i. e.* are not *fools*)."
In *Fuller's Holy State* (p. 182) is a story (suppressing the names) of a supposed "fool" of Lord North's who cut out a "fool" depicted on some tapestry in a gentleman's house, and explained afterwards that he had done so because, "if my Lord North had seen the fool there *he would have begged him*, and so you might have lost your whole suite." The names may, however, be gathered from the Harleian MS. in the British Museum (No. 6395). Butler, in *Hudibras* (pt. 3, Canto I, l. 590), speaks of those who "Beg one another idiot to guardians, ere they are begot." Similar passages in the writings of many other authors might be cited.

It is tolerably clear that though the Crown was in theory bound by statute to account for the surplus profits of a lunatic's land, and though a custom had in modern times grown up [see 1 *Ridg.*, P.C. 519: App. 2, i] of granting the surplus profits of an idiot's estate to some of his family, the servants and grantees of the Crown soon learnt how to realise a profit for themselves (which doubtless would in these days be called "a commission") out of the exercise of the royal prerogative.

The possibility of a profit being thus derived caused the officials of the Crown to be vigilant in the exercise of its prerogative as to the lands of insane persons.

Anciently, whenever the Crown had an interest in property, it was the practice to issue in each particular case an "Inquisition" to ascertain whether, under the exact circumstances, any, and what rights had accrued to it. Inquisitions *post mortem*, inquisitions as to escheat, and inquisitions as to treasure-trove, are instances of this which are familiar to lawyers. It was in this way, and because where a person was lunatic or idiot the Crown had a right to take possession of his lands, that inquisitions "de lunatico inquirendo" or "de idiotate inquirendo" (both of which technically still survive as Inquisitions in Lunacy) originated. These inquisitions have, like many other Crown rights, in modern times grown

to be really used for the benefit of those who have claims upon the person from whom the Crown derives its rights. Another instance of this, for example, is that though a person who is illegitimate is, in point of law, "nobody's child" (*filius nullius*), or a mere human waif or stray, and has in law neither father nor even mother, nor of course relatives of any sort, and on the death of such a person without leaving a will and without direct descendants, his property in the necessary absence of either heir-at-law or next-of-kin to him devolves upon the Crown, by what lawyers call "escheat," yet the Crown, while maintaining its prerogative rights, now generally distributes property, which accrues to it on an escheat (resulting from the illegitimacy), amongst the persons who are in truth (though not in strict law) the relatives of the deceased owner. Just in the same way inquisitions in lunacy, although originally, and in theory, still issued to ascertain the rights of the Crown, are (by virtue of legislation and particularly of the Lunacy Act, 1890) now usually issued on the petition of some subject who is interested in the alleged lunatic and his estate.

The theory that a commission in lunacy can only be issued on behalf of the Crown has accordingly been relaxed, and recognition given to the fact that in modern times such inquisitions are always, in truth, for the benefit of the insane person and his family, especially his wife and children. The Attorney-General, indeed, still has a right to petition the court for the issue of a commission in lunacy [see *Collison on Lunacy*, p. 125 ; *Pope on Lunacy*, 2nd edit., p. 56]. But petitions for the issue of a commission in lunacy are now almost invariably issued at the instance of the husband or wife, or a near relative [see *re Bedell*, 1809] ; and a petition by a stranger is generally regarded with jealousy, implying, as it necessarily does, that the lunatic's friends are neglecting their duty [*ex. p. Persse* (1828)]. Still, various persons connected with the lunatic only by way of business relationship, as *e. g.* a mere creditor [*Collison on Lunacy*, 125 ; *Shelford on Lunacy*, p. 114], have the right to present a petition for an inquisition. In strict law, indeed, even an utter stranger may do it [see *re Anstie* (1849) ; *re E. S.* (1876) ; *Pope on Lunacy*, *ubi sup.*].

The theory that an inquisition in lunacy can only be issued on account of some interest in the property of a lunatic, which is supposed to be possessed by the Crown, would appear, however, to still have some practical importance in one respect. For, on the one hand, it is clear that a commission in lunacy may properly be issued against an English subject (a term which includes an English colonist temporarily resident here ; see *re Houstoun* [1826]), if he be either resident or, though not resident, possessed of property in England [*ex. p. Southcot* (1751)] ; or even against an alien in the event of his possessing property here as well as being resident [*re Princess Bariatinski* (1843)]. But, on the other hand, it appears to be equally clear that such a commission ought not to be issued against an alien who has neither a residence nor property in England, and perhaps ought not to be issued against an alien who, though resident in England, has no property here.

The jurisdiction which the sovereign, as *Parens Patriæ*, exercises over insane persons is a part of the royal prerogative. Accordingly, such jurisdiction was originally exercised by the Crown in its Court of Exchequer ; it next passed to the Lord Chancellor ; then to the Court of Wards ; and, on the abolition of that Court, back again to the Lord Chancellor [see *Pope on Lunacy*, 2nd edit., p. 28]. It is, moreover, either (I) Original, or (II) Appellate.

The Original jurisdiction has again in practice been severed in modern times into (a) Judicial, and (b) Ministerial.

The *Judicial* portion of the original jurisdiction has ever since 1851 been possessed by the Lords Justices, each one of whom is now usually entrusted with it by Royal Sign Manual [see *re Waugh's Trusts* (1852) ; *re Pattinson* (1852)]. But so much of it as relates to the holding of inquisitions is usually exercised, under the direction of the Lords Justices, by the Masters in Lunacy [see Lunacy Act, 1890, secs. 111—114] and by such other persons as may be specially appointed [see *ibid.*, sec. 113], but may be exercised by means of an issue directed to be tried in the High Court [Lunacy Act, 1890, secs. 94, 334 ; *re Scott* (1874)].

The *Ministerial* portion of the sovereign's jurisdiction

over insane persons has, of modern years, and ever since its first establishment, been exercised by the "Lunacy Office." The "Masters in Lunacy" are the heads of this office, which bears much the same relationship towards a Judge in Lunacy administering the administrative jurisdiction in lunacy, as his chambers do to a Judge of the Chancery Division when exercising his administrative jurisdiction; and towards parties who as lunatics have become subject to the Chancery Jurisdiction, the same relationship as was formerly occupied by ordinary "Masters" (who are now superseded by "Chief Clerks") towards the suitors who were the subjects of the ordinary jurisdiction of the Court. The "Lunacy Office" is quite different from the office of the "Commissioners in Lunacy," and must in no case be confounded with it—the two offices being entirely separate and distinct. The Commissioners in Lunacy being merely Commissioners appointed to see that the Lunacy Acts are properly complied with throughout the whole of the country, have nothing whatever to do with patients found lunatic by inquisition *as such*. The Masters in Lunacy, on the other hand, are merely officials of the Chancery Division of the High Court, and fill very much the same position towards the Judges in Lunacy. The present work, being intended to deal only with the *personal* position of insane persons, will not refer, in any detail, to the practice of the "Lunacy Office."

The *Appellate* jurisdiction in lunacy, being a jurisdiction originally personal to the sovereign, formerly belonged to the "Sovereign himself in Council," *i. e.* to the Privy Council [see *Samuel Pitt's case* (1726) and note *a.* thereto; *Pope on Lunacy*, 2nd edit., pp. 32, 33]. Under the Judicature Act, 1873, however, the appeal in lunacy now is direct to the Court of Appeal, and thence to the House of Lords [see 36 and 37 Vict., c. 66, sec. 18].

The law as to the kind and degree of incapacity of mind which will justify the issue of a commission in lunacy has not always been uniform. Originally, no doubt, a commission was only issued when the tenant's mental incapacity was such as to prevent the due performance by him of the feudal services which he was by tenure bound to render to the sove-

reign. Accordingly a commission in lunacy was originally, and, indeed, until comparatively modern times, only issued in cases of idiocy and lunacy. From cases of idiocy and lunacy it was extended to every party whom a jury thought to be *non compos mentis* [see per Hardwicke, L. C., in *Lord Donegal's case* (1751)]. But, until the passing of the Lunacy Act, 1890, it was still needful that the jury should expressly find the person to be both incapable of managing his affairs *and* of unsound mind. Therefore, in a case long before the Act, where it was merely found that the patient was mentally weak as to figures, but otherwise of sound mind, it was held that there could be no inquisition [see *Lord Donegal's case* (1751)];—a return that a person was “from weakness of mind” incapable of managing himself and his affairs was quashed [see *ex. p. Barnesley* (1744)]: and a mere finding (not amounting to one that he is of unsound mind) that a person is, from imbecility, incapable of managing himself and his affairs [see *re Earl of Portsmouth* (1815)], or that he is, from weakness of mind, incapable of managing his affairs [*ex. p. Cranmer* (1806)], will not suffice to justify the issue of a commission. The best known modern case, showing that mere incapacity as a spendthrift to manage one's own affairs is, in English law (thus differing from the Roman law as to the “*Prodigus*”), no sufficient ground for the issue of a commission, is probably the notorious one of Mr. Windham in 1861, where, after a thirty-five days' inquiry, the jury were directed that the alleged lunatic's mere incapacity to manage his affairs, without insanity, would not justify the issue of a commission [see “Summing up of Master Warren,” *Times*, January 30th, 1862]. As Lord Hardwicke observed: “There are various degrees of weakness and strength of mind, from various causes. There may be a weakness of mind that may render a man incapable of governing himself, from violence of passion, and from vice and extravagance, and yet not sufficient under the rule of law, and the constitution of this country, to direct a commission.” And as a person's mere incapacity to manage his affairs was not formerly sufficient to justify a commission, so, on the other hand, mere insanity, without incapacity, on the part of the patient, to manage his

own affairs, is also not sufficient ground for the issue of a commission in lunacy—as, for example, in cases where a person has a delusion on one particular subject [see *ex. p. Hall* (1802)]. Where, however, unsoundness of mind, and an incapacity to manage his own affairs arising from “imbecility of mind,” both exist in the same individual, it has, ever since the decision of Lord Eldon (who greatly extended the protection given to lunatics, both by commission and by the Court of Chancery, in the case of *Ridgway v. Darwin* in 1802), been held that, in the words of that great Chancellor, “the commission of lunacy is not confined to strict insanity, but is applied to cases of imbecility of mind to the extent of incapacity from any cause, *e. g.* disease, age, or habitual intoxication,” and that, to use the words of Lord Erskine in another case, “It falls on the king to take care of those who cannot take care of themselves” [*ex. p. Cranmer* (1806)]. Commissions in lunacy have accordingly been issued in cases of permanent “imbecility of mind” arising either from old age [*Gibson v. Jeyes* (1801); *Mr. Charlton Palmer’s case* (undated, but as cited by Lord Eldon in *Ridgway v. Darwin* [1802])]; *Cory v. Cory* (1747)], epilepsy [*Ridgway v. Darwin*], or habitual and constant intoxication [see per Lord Eldon in *Ridgway v. Darwin*].

To obtain the full benefit of an inquisition, finding that the subject of it is a lunatic, there must still in general be a finding by a jury which is sufficient to satisfy the requirements of the law as above detailed. But, if they please, a jury may now find a person to be of unsound mind so as to be incapable of managing his own affairs, but that he is capable of managing himself, and is not dangerous to himself or others. On such a finding, the Judge in Lunacy has power to make orders for the management of the person’s estate, and for his maintenance, but need not make any order as to the lunatic’s personal position [*Lunacy Act*, 1890, sec. 103].

It would appear, however, to be still necessary that the cause (whatever it may be) of such incapacity as the jury think exists, should produce actual *permanent* incapacity of mind; for, where the usual and normal condition which exists is one of capacity, with only occasional unsoundness of mind arising from these causes, a commission in lunacy

will not be issued [see per Lord Cottenham in *J. B.'s case*, 1836].

The Court by which the jurisdiction in lunacy is exercised, the persons over whom it will be exerted, and the persons at whose instance it will be used, have all now been pointed out. It would be altogether foreign to the objects of this book (which is intended only to trace in outline the substantive law as to the *personal* treatment of lunatics) to state in any detail the practice which is followed to obtain, or in connection with the issue of, a commission in lunacy. To enable the reader to intelligently follow the course of events, and to understand what is going on, it is, however, necessary to state shortly the outline of the proceedings which take place.

A petition in lunacy must be presented by one or other of the persons who have already been mentioned as capable of so doing (see *ante*, pp. 72, 73).

A person who presents a petition for an inquisition maliciously, and without reasonable and probable cause, is liable to pay damages for so doing if the inquiry be not ordered; or if, when ordered, it is either superseded or results in the alleged lunatic being found to be of sound mind [see *Pope on Lunacy*, pp. 64, 65].

The petition for an inquisition in lunacy must be in the form provided by the *Lunacy Act*, 1890 [see Appendix, *Rules in Lunacy*, 1892, Schedule Form 4]. It is addressed to the Lord Chancellor, signed by the petitioner, and attested by a solicitor [L. R., 1892, r. 16]. It is supported by affidavits showing, in general terms, the nature and amount of the alleged lunatic's property, and also showing the particulars of his supposed unsoundness of mind, and how it is manifested. The affidavits are generally made by one or more members of the alleged lunatic's family and by a couple of medical men, who, strictly speaking and according to the letter of the law, ought not to be connected with private asylums or hospitals [see *Anon* (1844)]. But although the law is in the abstract as just stated, in practice, when an inquisition is desired to be held upon a patient who is already an inmate of a hospital or asylum, the medical superintendent almost invariably makes one of the two affidavits to be furnished from

medical men, and it not unfrequently happens that both such affidavits are made by medical officers of the institution. . Such persons are certainly those who are best able to testify as to the patient's mental state, and this is doubtless the reason why the practice is somewhat different from what at first sight might appear to be the requirements of the law. The petition and affidavits in support are left at the office of the Masters in Lunacy. .

A person who apprehends that a petition in lunacy is likely to be presented against him, may ensure receiving immediate notice of the presentation of such a petition by entering a "caveat" against it at the office of the Masters in Lunacy (the form of this is given in *Elmer's Lunacy*, p. 143). The alleged lunatic will then, immediately upon its being presented, receive notice of any petition in lunacy, and may attend and oppose it in the first instance [see *re Bushnell* (1826)].

The cases in which a *caveat* has been entered are, however, comparatively few, and when there has been none the course of procedure is as follows.

Notice of the presentation of the petition must, if he be within the jurisdiction, be served upon the alleged lunatic in a prescribed form [see L. R., 1892, r. 26]. This is done to enable him to formally demand a jury. If, however, he be not within the jurisdiction, notice of the petition need not be served upon him, but there must in any event be a jury [see Lunacy Act, 1890, sec. 96].

In addition to service of it upon the alleged lunatic, if the petition be presented by any other relative, the husband or wife of the alleged lunatic must be served with it; and if it be by a stranger, both the husband or wife, and the next of kin of the alleged lunatic, must be served.

Petitions in lunacy are not formally set down for hearing at all. If there be more than one petition, the several petitions are heard in the order in which they are answered, and this even as between several presented on the same day [see *Pope on Lunacy*, 2nd edit., p. 61].

On the petition for an inquiry coming on for consideration, the Judge in Lunacy must, in any case, be satisfied that the inquiry is really for the lunatic's own good and protection [see *Pope on Lunacy*, 2nd edit., p. 53]. If there be no opposition,

the judge will make an order, as of course, on being satisfied of this ; provided that the formal service of the petition be proved, and that the affidavit of such service of such petition has been duly filed in the office of the Masters in Lunacy, and that the parties who would (if it be not presented by them) have been the proper parties to present it, consent, or at least do not object [see *Pope on Lunacy*, 2nd edit., p. 60]. But such order of course will not be made where the petition is by a "stranger," without the concurrence of either the alleged lunatic's husband or wife (if any), or of his next-of-kin.

On the hearing of the petition, whenever the Judge in Lunacy orders an inquiry before a jury, he may direct it to be made by means of an issue to be tried in the High Court in which the question shall be whether the alleged lunatic is of unsound mind and incapable of managing himself or his affairs [see Lunacy Act, 1890, sec. 94, subsec. 1].

At the hearing of the petition, it will, if an order for an inquisition be made, be determined to whom "the carriage of the petition" (as lawyers technically call it) shall be given ; that is to say, who shall have the right of conducting the proceedings.

As to this, the cardinal, and ever-ruling, principle is that the "carriage of the petition" will always be given to the party whom the Court thinks is, under all the circumstances, most likely to bring out the truth. Subject to this, preference will usually be given either to (1) the nearest relative (if there be no specific ground for objecting to him) or to (2) the earliest petitioner [see *Pope on Lunacy*, 2nd edit., p. 61].

At the hearing of the petition for an inquisition it will also be determined what persons shall have permission to attend the execution of the commission. In theory (as is undoubtedly the case historically) an inquisition is a mere *ex parte* proceeding by the Crown. The alleged lunatic, and those acting on his behalf, are, however, in modern times always allowed to attend the inquiry. But other persons who may desire to attend can only do so if the Court grant them special permission. The grant of such permission is entirely in the discretion of the Court, which may, accordingly, impose what conditions it pleases as the price of such permission. But the per-

mission will always be granted, at the expense of the estate, to persons who are interested, and whose attendance is likely to bring out the truth, or even will be clearly for the benefit of the alleged lunatic. When neither of these conditions clearly exist, persons are usually allowed to attend on the condition that their costs are not to be paid, if it turn out that there was no good ground for it. Relatives have, as such, no right to attend, but will be allowed to do so, if interested, or shown to be likely to elicit the truth. Strangers, if interested in the verdict, are now usually allowed to attend the inquiry at their own expense. No condition that, if so attending, he will agree to be bound by the verdict, ought to be imposed on a person getting leave to attend the inquiry [see *Pope on Lunacy*, 2nd edit., pp. 62, 63].

At the hearing of the petition too, if an inquiry be ordered, provision will usually be made for the parties on both sides, and their respective medical men, to have access to the alleged lunatic. If the parties, however, do not agree on what terms this shall be permitted, the Court will direct two of the Visitors in Lunacy to see the alleged lunatic, and report [*Pope on Lunacy*, 2nd edit., pp. 63, 64].

Assuming an order for an inquiry to be made, the technical legal steps to draw it up are taken by the solicitor to the party "having the carriage of the petition." He leaves the order at the office of the Masters in Lunacy, and arranges with them, when, where (in what room, &c.) the inquiry shall take place.

At the appointed time and place the inquiry accordingly proceeds. The Court in which it is held is by Statute (1 Hen. VIII, c. 8) an open one.

The inquiry takes place, as will have already been gathered, before a Master in Lunacy. In ordinary course it is held before him *without* a jury (see Lunacy Act, 1890, sec. 92).

It is provided by sec. 99 of the Lunacy Act, 1890 (as amended by the Lunacy Act, 1891, and its Schedule) that the person executing an inquisition shall while so employed have all the powers, authorities, and discretion of a Judge of the High Court. The Act of 1890 only gave such powers, &c., to a person executing an inquisition "with a

jury," but by the Lunacy Act of 1891 the words "with a jury" are struck out, and the clause in the Act of 1890 thus rendered of general application. By sec. 26 of the Lunacy Act, 1891, the provisions in sec. 94, subsec. 2, of the Lunacy Act, 1890, extend to the hearing of all inquisitions, and the Masters may, for the purpose of inquisitions held before them, exercise the powers which are conferred by that sub-section upon a Judge who is trying an issue in lunacy, and the Masters may make orders for the attendance of the alleged lunatic at a given time and place for examination by the Masters or a medical practitioner, and any such order may be enforced in the same way as an order of a Judge of the High Court.

The trial of an Inquisition is, in ordinary course, heard before a Master in Lunacy alone, and without a jury. The alleged lunatic, however, has a right to demand a jury, though this right only exists upon the original inquiry [*re Talbot* (1882)]. To exercise such a right, a demand must be made by a notice signed by such alleged lunatic, and attested by a solicitor, and filed in the office of the Masters in Lunacy, either at any time before the petition is considered, or upon its being considered [L. R., 1892, r. 30]; and, as will have been gathered, in any case in which a demand for a jury is legally and duly made, the order for an inquisition, if made, *must* direct that the hearing shall take place before a jury, unless, indeed, the Judge in Lunacy (who may direct his attendance upon him) be satisfied that the lunatic is not mentally competent to express a wish for one. In practice, the judge often causes the alleged lunatic to be examined by a medical man, though, should his report as to the lunatic's competency be unfavorable, it will be noted that the judge will then have to personally see the patient, before he formally refuses a jury [see Lunacy Act, 1890, sec. 91]. The demand, even after it has been made, may be personally waived by the alleged lunatic [*re Crompe* (1869)]. The judge will only refuse a jury if, on seeing the alleged lunatic, he is satisfied of his incompetency [see *re Talbot* (1882)]. A jury is needed (as was previously mentioned) whenever the alleged lunatic is not within the jurisdiction.

The effect of the enactments now in force on the subject (and set out above) is to render identical the practice on the trial of an issue in lunacy before a Judge, and that followed on the trial of an inquisition before a Master.

The proceedings on the execution of a lunacy inquiry with a jury are held in a place which must by statute be an open Court [see 1 Hen. VIII, cap. viii; *Pope on Lunacy*, 2nd edit., p. 67]. Such proceedings are somewhat formal. First the Under-sheriff (if there be a jury) calls over the jury panel; then the commission (general or special, as the case may be) is read; next the Master gives a sort of "preliminary discourse" stating the nature and objects of the inquiry, the law as to it, and the special points for the consideration of the jury; while the counsel for the petitioners (or if there be none, the Master himself from the affidavits) "states the case."

It is directed (by sec. 94, subsec. 2, of the Lunacy Act, 1890) that there be an examination of the alleged lunatic before the evidence is taken, and at the close of the proceedings before the jury consult as to their verdict, unless the presiding Judge or Master otherwise directs, and such examinations are also either to be in open Court or in private as he may direct.

In theory, the evidence must be the same whether a jury has been ordered or not. But in practice it is easier to get a lunatic so found on an inquisition heard before a Master in Lunacy alone than it is on one heard before a jury; not that it is intended to suggest that, in the end, justice will in either case fail to be done, but the subject of the inquiry is a highly technical one, and the Masters, being in the constant habit of hearing scientific evidence about it, and of conducting inquiries as to it, will usually appreciate evidence of acts of insanity more readily than an untrained jury not previously conversant with the matter—many of whom, indeed, have probably never tried a case of the sort before, and never will do so again. Nor is the mistake of a jury always on one side. It is not unknown for them to fall into the easy error of mistaking eccentricity for insanity, and finding a person lunatic who in reality is not so.

If a jury has been ordered, its number will be fixed by the

order itself. But twenty-three is (as in the case of a Grand Jury) usually the largest number allowed. It is, however, legally necessary that the verdict be agreed upon by at least twelve jurymen [see Lunacy Act, 1890, sec. 97; *re Windham* (1862)].

The witnesses are, in practice, largely (though not entirely) skilled witnesses—that is to say, medical men—who attend in the professional employment of either side. All witnesses are summoned, and may be compelled to attend, by summonses very similar to a subpoena, issued from the offices of the Masters in Lunacy.

The question to be determined at the hearing of an inquisition (and to this point the evidence ought all to be pointedly directed) is whether the alleged lunatic is, or is not (in the words of the Lunacy Act, 1890, sec. 98) “at the time of the inquisition of unsound mind, and incapable of managing himself or his affairs.” This, as has already been pointed out (*ante*, p. 37), is not identical with the question arising for determination, when it is sought to place a person under confinement under the Lunacy Acts (see also *post*, “Statutory Orders”).

The evidence accordingly (and medical witnesses in particular will do well to keep this constantly and persistently in mind) must be directed to prove not merely what is theoretically and scientifically a state of insanity on the part of the alleged lunatic, but that he is *so* insane as to be incapable of managing himself and his affairs. It will not be attempted here to go into any detail as to what facts such evidence may or may not establish, for the facts will vary in every case. The simple rule just furnished will guide the reader sufficiently upon this point, and it should never be forgotten that the absurdity of supposing that *any* unsoundness of mind would justify a commission in lunacy, which is said to have prevailed at one time [see *Pope on Lunacy*, p. 17], now no longer exists; and that it is now expressly required that the unsoundness of mind be such (to use the words of the Act) as to render the patient “incapable of managing himself or his affairs.”

An enactment [see Lunacy Act, 1890, sec. 98, subsec. 2] now, however, enables a jury to find a special verdict to the

effect that the alleged lunatic is capable of managing himself, and is not dangerous, though incapable of managing his affairs. This provision is especially useful in cases where the patient is a person of advanced age who is suffering from senile decay after (it may be) a life made remarkable by his previous possession of a vigorous intellect.* Juries are, too, sometimes inclined to act upon it as affording a sort of compromise in cases where some of their number feel a disinclination to "convict a person of insanity" (as a common but most improper phrase terms it).

The Lunacy Law, has for some years past, laid down two important rules as to the procedure which is to be followed in the conduct of an inquiry by commission as to a person's sanity.

In the first place, those making the inquiry must not act *merely* on the evidence of others, but must themselves see the alleged lunatic apart from everyone else. The subject of the inquiry has a right to insist upon this [see *ex. p. Cranmer* (1806) ; *in re J. B.* (1836)]. It will be noted that this rule is certainly as old as 1806 (and probably a great deal older [see *Halse's case* (1743)]), though it is incorporated by express enactment in the Lunacy Act, 1890 [see Lunacy Act, 1890, section 94, subsec. 2]. The examination of an alleged lunatic before a Master in Lunacy takes place either in open court or in private, as the person presiding at the inquisition may direct.

An inspection by the jury of the alleged lunatic being thus essential, his production at the execution of the commission may be compelled by the service, upon those in whose custody he is, either of an order for his production at that time, previously obtained from the Judge in Lunacy (disobedience to which will be a contempt of court), or of a warrant issued by a Master, either previously to or at the holding of the inquisition [see Lunacy Act, 1890, sec. 114].

* It is remarkable that persons of exceptional ability often fall in their old age into a condition of childlike imbecility. The case of Dean Swift will at once occur to everyone's mind. But either Lord Chancellor Sommers, the famous Duke of Marlborough, or Lord Mansfield might, towards the close of their respective lives, each have been the fit subject of a commission in lunacy.

If, however, the alleged lunatic keep out of the way purposely, the inquisition may be taken in his absence [see *Halse's case* (1743)].

The examinations of the alleged lunatic which the law requires are now the same whether the inquiry is before a Judge trying an issue or before a Master taking an inquisition in lunacy, and must take place twice—first *before* the taking of any evidence, and a second time at the close of the proceedings unless the presiding judge otherwise direct [see Lunacy Act, 1890, sec. 94].

The second great rule governing the procedure at a lunacy inquiry is that no evidence *in support of proof of insanity* can be received of anything said or done by the alleged lunatic or as to his demeanour or state of mind at any time more than two years before the time of the inquisition, unless the person executing the commission (see *re Danby* (1885)) otherwise directs. This rule was brought into existence in the (now repealed) Lunacy Act of 1862, probably in consequence of the inquiry in the famous *Windham case* having lasted for weeks and travelled over the whole lifetime of the alleged lunatic [so stated by Bowen, L. J., in the above case of *re Danby* (1885)]. This rule is now incorporated into the Lunacy Act, 1890 (sec. 98).

At the end of their evidence the case for the petitioners is summed up by their counsel.

Then the case for the parties opposing the petition is "opened" by their counsel, and the witnesses in opposition to the petition called, and of course cross-examined. At the end of the evidence for the opponents of the petition their counsel sums up their case.

Should evidence have been given in opposition to the petition, the counsel for the petitioners has a right, after the summing up of the counsel for those opposing it, to make a speech for the petitioners "in reply."

Finally, the Master sums up the case; after this the jury give their verdict.

This must expressly and distinctly find either that the alleged lunatic is, or that he is not, capable from unsoundness of mind of managing himself and (or) his affairs.

A mere finding of incapacity without saying that the patient is "of unsound mind," so as to be incapable, &c., or a mere finding that he is "of unsound mind," without adding that he is thereby rendered incapable, will not be sufficient to justify the issue of a commission in lunacy; while a finding on the inquisition which is *ambiguous* in these vital respects may be quashed. But the verdict of a majority of the jury will suffice.

When the verdict has been found, the finding which it arrives at is engrossed upon the inquisition and signed and sealed by those of the jury who assent to it. In practice a wafer-seal is generally used by each jurymen as his "seal"—the necessary forms being filled up by the Master in Lunacy (assisted by the clerk who usually accompanies him) at the end of the inquiry.

It will be recollected (*ante*, p. 80) that there is power to direct an issue to be tried in the High Court as well as to order an inquisition to be taken by a Master before a jury or otherwise. The procedure at the trial of an issue in the High Court before a judge is now the same as on the trial of an inquisition before a Master. It is directed [Lunacy Act, 1890, sec. 94, subsec. 1] that on the trial of every such issue the provisions of the Lunacy Acts as to trials of inquisitions before a Master shall apply to any issue directed under the Act, and to its trial, and that subject thereto, and to the provisions of the Lunacy Acts, such issue and the trial thereof shall be regulated by the Rules of the Supreme Court for the time being in force relating to the trial of issues of fact by a jury, and that the verdict upon any such issue finding the alleged lunatic to be of unsound mind and incapable of managing himself or his affairs, shall have the same effect as an inquisition.

The costs of the proceedings are, upon an ordinary trial at *nisi prius*, usually dealt with at the conclusion of the trial. But a mere commissioner, who has only been deputed to actually try the case—as, for instance, an Under-Sheriff or a Judge at Assizes who has merely *tried* a cause "sent down" to him by the Probate or the Chancery Division for that purpose,—has no authority at all over the costs. These must, in each case, be dealt with by the Court which

directed the proceedings. A Master in Lunacy who has tried an inquisition has, in the same way, no authority at all as to the costs. These remain entirely in the power of the Judge in Lunacy. Accordingly, an application must be made by motion to the Judge in Lunacy in London, in whose discretion they are [see Lunacy Act, 1890, sec. 109]. It is in these cases emphatically *not* the rule that the costs necessarily follow the event. It by no means results from the finding of a jury that an alleged lunatic is sane, that those who presented the petition in lunacy will have to pay the costs of it—or will even fail to get their costs out of the alleged lunatic's estate. The great principle by which the court in lunacy will be guided in awarding costs is to look to the benefit of the alleged lunatic alone. While, on the one hand, it doubtless may punish those who, from selfish motives, present a frivolous and groundless petition in lunacy, it will, on the other hand, if satisfied that all was done for the best in the real interests of the alleged lunatic, either give costs out of the alleged lunatic's estate to those who initiated the proceedings, and even if under such circumstances their conduct has not been beyond reproach in every detail, will not make them pay any costs. The broad principle on which the court in lunacy acts is as above stated. The details of the rules by which it is governed in applying this principle will be found considered at some length in the celebrated case of *Mr. Windham* [see *re Windham* (1862)], and also stated in *Mrs. Cathcart's case* [*re Cathcart* (1892)].

A finding by the jury that the alleged lunatic is insane may be carried into effect directly it is given, and continue to be acted upon so long as it is unreversed. "A lunatic so found by inquisition may be received in an institution for lunatics or as a single patient upon an order signed by the committee of the person of the lunatic,* and having

* The committee of the person of a lunatic is appointed by order made in the Lunacy Office subsequently to the finding on the inquisition that the person is a lunatic. See further, *post* p. 90, *et seq.* In urgent cases the presiding Master in Lunacy will usually, so soon as the jury have given a verdict finding that the subject of the petition is insane, give directions as to what is to be done with the lunatic until a formal order on the subject of his care and custody can be made in the Lunacy Office.

annexed thereto an office copy of the order appointing the committee; or if no such committee has been appointed, upon an order signed by a master" [see Lunacy Act, 1890, sec. 12]. In practice, it is a common arrangement for the lunatic, so soon as he is so found by the verdict of the jury upon the inquisition, to be taken charge of by someone mutually approved of both by the Master in Lunacy who presides at the inquiry, and by those promoting the petition, until permanent arrangements can be made, by means of the due appointment of Committees, and the other proceedings in Chambers which will be described briefly below.

The alleged lunatic and his friends may, however, desire to upset the finding of the jury that he is so unsound of mind as to be incapable of managing himself or his affairs. This, if desired, and there is ground for it, may be done in either of three ways, namely: (1) by application to quash the inquisition; or (2) by application for a supersedeas; or (3) by a "traverse."

In the first place, an inquisition may sometimes be quashed where it is technically and formally defective; as, for example, where the order directs an inquisition into the state of mind of A. B., and the inquisition finds the mental state of C. D. (though a mere mistake in a Christian name is not material); or where the finding itself is ambiguous or contradictory. The grounds on which an inquisition may be quashed will be found stated in some detail in the books on practice [see *e.g.* *Pope on Lunacy*, 2nd ed., p. 75].

In the next place, an inquisition also may be got rid of for merely formal defects by means of a "supersedeas." A short outline of the mode by which this is effected will be found on a later page, since the issue of a supersedeas on substantial (and not merely on technical) grounds is the correct way of getting rid of an inquisition where a lunatic recovers (see p. 93).

The finding on an inquisition may be disputed by a method differing from the two which have been already described. This method is technically called a "traverse." The meaning of this technical term will be better appreciated if it be remembered that it is not quite an unknown

phrase in ordinary conversation to say when a man makes a statement, "I traverse that fact;" to "traverse" a thing is, in other words, to *deny it*, or at least to put those by whom it is stated to prove it. Now in theory, an inquisition (of whatever kind it be) is a mere *ex parte* proceeding by the Crown which justifies it in seizing a subject's property. With regard to inquisitions other than lunacy inquisitions, the subject was by statute in very early times (34 Ed. IV, c. 13; 36 Ed. IV, c. 36) given the right to come forward and deny the findings in the inquisition, thus putting himself in the position of a *defendant* (who may simply rest on his rights), instead of occupying that of a plaintiff (who has to prove his case affirmatively) as was the case when he (as previously) proceeded by petition of right. And in the time of Edward VI (2 and 3 Ed. VI, c. 8) a similar right was extended to findings upon inquisitions in lunacy.

This right may, so long as the alleged lunatic is alive (not after his death, since his personal attendance at the trial of the traverse may be required), be exercised by either of three persons, namely (1) by the alleged lunatic; (2) by his or her husband or wife; or (3) by the alienee of the alleged lunatic (or in other words by a person to whom his or her property has passed). A traverse is only allowed once—a second one will not be ordered—and is a matter of right and not of favour. But if the right is claimed by the alleged lunatic, the judge in lunacy must be satisfied that the demand is really the mental act of such lunatic himself, and not a mere act done mechanically at the bidding of those about him [see *re Cumming* (1852)]. Leave to traverse is obtained upon petition. The trial of a traverse takes place in the Queen's Bench Division of the High Court, and a new trial of the traverse may be obtained probably from the Queen's Bench Division of the High Court.

Assuming, however, that matters proceed in ordinary course, and that there is no reason to delay them in order to await the result of proceedings to quash the inquisition, or the trial of a traverse, the order of events, after a finding by a jury on an inquisition that the party is a lunatic, will be in outline as follows:

The persons having "the carriage of the proceedings" take out a summons, before one of the Masters in Lunacy, for inquiries as to the lunatic's property, income, heir-at-law, next-of-kin, and other circumstances, and for the appointment of two "Committees," one of whom is "Committee of the person" and the other "Committee of the estate." So far as possible all the proceedings in the case are always heard by the same master.

The "Committee," either of the person or of the estate, may consist either of one or of more persons. The "Committee of the person" is not always the person with whom the lunatic actually lives (though such Committee is answerable for the lunatic's comfort and well-being); neither is the "Committee of the estate" of necessity the person who actually manages it, though he is responsible for its management.

With the "Committee of the estate" and his appointment and duties, we have in this book (which only relates to the *personal* treatment of the insane) no further concern.

The "Committee of the person" must be someone resident within the jurisdiction of the Court. A married woman may be appointed to the office. Persons having the carriage of the proceedings have no prior claim to be themselves appointed to, or to nominate a person for appointment to, the office of committee. Speaking generally, a married lunatic's wife or husband, or an unmarried one's next-of-kin (not his heir-at-law), will be preferred for the office of committee. Usually, too, a person who is of the same sex as the lunatic will be preferred, and the personal wishes of both the lunatic, and of his or her family, will, as far as possible, be regarded. Consideration will, moreover, be given as to how near to the lunatic the proposed Committee of his person resides.

Before anyone can be appointed a "Committee of the person" (and this requirement also affects a "Committee of the estate") he must give a written consent to act. No security is, however, required to be given by the "Committee of the person" (although it is required from the "Committee of the estate"), but he is required, before appointment, to give a written undertaking that, in the event of his appointment,

he will visit the lunatic quarterly or at other fixed intervals; and if furniture, &c., is entrusted to him, he usually signs an inventory, and an undertaking to return it, which is deposited in the Master's office.

The "Committee of the person" has (as the phrase implies) general care of the person of the lunatic. He acts, however, in pursuance of a general plan (or "scheme") of arrangement as to the care and management of the lunatic which is settled early in the proceedings by the Master in Lunacy, and afterwards, on application, varied by him as circumstances require. Under this "scheme" he is allowed, as already noted, if he so desires, to send the lunatic to an asylum [see Lunacy Act, sec. 12, *ante*, pp. 87, 88]; but if he thinks it desirable so to do, he may arrange for the lunatic to live in the house of a medical man or other fit person as a boarder. In any case the "Committee of the person" (subject to the control of the Court) fixes the lunatic's residence. He also selects the lunatic's medical man (whose name and residence must be furnished to the Visitors in Lunacy).

If the lunatic be sent to an asylum, the usual asylum books will, as a matter of fact, be kept in the usual course (as to which see *post*, Chap. III of this Part). If, however, the lunatic be kept in a private house, there are no statutory requirements as to keeping books, and even in a private house the requirement that the lunatic be visited by his medical attendant every fortnight does not apply, unless (as they can do) the Chancery Visitors specially order it [Lunacy Act, 1890, sec. 44, subsec. 5].*

When the lunatic remains in a private house of his own the Committee regulates his establishment, hires and discharges his servants, and so on. The lunatic must, wherever he be resident, be visited by the Committee at least quarterly or at other intervals fixed by the Court. The Committee of the person must give notice to the Board of Visitors of every change of residence, and must not (save under special circumstances and by leave of the Court) take the lunatic out of England. Moreover, he is by no means allowed an entirely "free hand" in all respects, even as to matters of

* As to the Regulations of the Board of Visitors see Appendix A.

detail which are necessarily left to his immediate control. For he is obliged to furnish to the Court half-yearly statements as to the lunatic's health, recreation, changes of scene and air, exercise, society, and so on.

Moreover, a further check upon the Committee of the person of a lunatic is afforded by the periodical visits of the "Chancery Visitors." For in 1862 a "Board of Visitors" to visit lunatics so found by inquisition was established, which consists of the Masters in Lunacy and of two medical and of one legal visitor (the medical visitors being medical men who do not practise or keep or possess an interest in an asylum, and have not done so for two years previously to appointment; and the legal visitor being a barrister of five years' standing when appointed). The visitors have to visit, four times every year, such lunatics as have been found so within two years previously and are living in private houses; and all other lunatics (*i. e.* those not in a private house and those who have been found lunatic for more than two years) at least twice a year. They are furnished before these visits with particulars as to the lunatic's income, and a copy of the plan (or "scheme") for his care, &c., which has been referred to above, and after each visit they make a written report which is considered by the Board, who can, where necessary, require the "Committee of the person" to attend. They also make a special report to the Lord Chancellor once a year.

It sometimes occurs that the lunatic's recovery makes it necessary to get rid of the finding on the inquisition that he is a lunatic. The proper mode of proceeding in such a case is by applying for what is called a "Supersedeas," that is to say, a writ directing that the inquisition and the finding upon it be "superseded" or set aside.

To justify the issue of a supersedeas, it must be shown that the lunatic is restored to *such* a state of mind that he is capable of the management of himself and his affairs. This really, and in substance, requires more capacity than existed when the lunatic was so pronounced. For the proof in the affirmative of adequate soundness of mind now rests upon those who allege its existence; and a degree of mental strength which perhaps would have prevented a finding of

insanity in the first instance, may still prove insufficient to support affirmatively the assertion that the party possesses competency of mind.

The application for a "supersedeas" to issue is made by means of a summons, supported by strong evidence from medical men, and others, who know him, of the lunatic having regained his competency. If the application be entertained, the lunatic will be directed to attend before the Judge in Lunacy at a fixed time to be seen and examined by him. No supersedeas can be issued without this taking place.

Should the Judge in Lunacy, on seeing the lunatic, think fit to do so he may either order an issue as to whether or not the lunatic has recovered, to be tried; or he may suspend the commission temporarily, and for a fixed period; in which latter case the Master in Lunacy makes a report at the end of the period mentioned; or such Judge may require the lunatic to attend before him again. By the Lunacy Act, 1890, the Judge in Lunacy may, moreover, with the consent of the lunatic, and of such other persons as he deems needful, order the commission to be superseded on such *terms and conditions* as he may deem proper, or he may supersede it as regards the person only and not as to the estate [see Lunacy Act, 1890, secs. 105, 106].

An inquisition in lunacy may, however, be put on end to not only by the recovery of the lunatic, but by either the supersession or death of the committee or by the death of the lunatic himself.

On the committee being discharged from his office in either of these ways, his accounts will be taken and any balance ultimately found due by him will be ordered to be paid to the lunatic himself, to his estate in lunacy or to his personal representatives (as the case may be); and any ultimate balance found due to him will, if the lunatic be alive, be ordered to be paid out of his estate, and if he be dead will be secured by payment out of any fund in Court in the matter of the lunacy being ordered, before the Court parts with such fund, and pays it over to those to whom (subject to this payment) it belongs [see *Pope on Lunacy*, 2nd edit., p. 201].

On the death of a lunatic so found by inquisition his funeral arrangements are usually made by, and conducted under the supervision of, the Committee of the person. If there be a fund in Court to the credit of the lunacy, the Committee may charge the amount of reasonable funeral expenses against such fund. If there be none, he must be content to be a creditor for the amount of any estate which the lunatic may have left.

Any will, or alleged will, which the lunatic may have left is opened by the Masters in Lunacy, after being satisfied of the death ; and both it, and any deeds in their possession, are sent by them to the parties entitled to them [L. R., 1892, rr. 46—47 ; *Pope on Lunacy*, 2nd edit., pp. 213, 214].

Any property (whether land or goods) which the lunatic may have left is distributed by the usual Courts in the accustomed manner, and not in lunacy. In case of any dispute as to the devolution or distribution of this, the Court in Lunacy (and consequently the Committees in Lunacy and its other officers) must observe a position of the strictest impartiality ; all deeds, &c., left by the lunatic being held by it to be equally accessible to all the claimants.

CHAPTER III

DETENTION AND TREATMENT UNDER RECEPTION ORDERS OR OTHER MODERN STATUTORY AUTHORITY

As we have seen, the original common law made no provision for the care of the persons of the insane, but only concerned itself with providing that such persons might be restrained from becoming dangerous to others. Early in the fourteenth century Parliament intervened, and made provision for the *property* of those mentally afflicted devolving upon the Crown as part of its revenues after compliance with certain formalities. It remained for modern legislation to make provision for the care and comfort of the *persons* of the insane or idiotic.

Proceedings by way of inquisition, which are the oldest form of statutory interference with the insane, and have been already described, are in ordinary cases very costly. Consequently they can only be taken in the case of persons of considerable wealth, and should, moreover, never be resorted to, even in such cases, unless the insanity is either permanent, or grave inconvenience and difficulty will be caused in the management of important business or property by its existence for any time which is likely to prove substantial.

The great bulk of the insane, however, do not belong to the wealthy class, whose friends are able to indulge in the expensive luxury of getting them found lunatic by inquisition. Many of them are drawn from the middle classes, who are either possessed of small incomes, with which they are just able to maintain themselves, or else are the recipients of assistance from charities, which thus preserve them from falling into the pauper classes. Such persons, for the most part, fall under the operation of, and are detained under orders made under the provisions of the Lunacy Act, 1890.

And the numerical majority of the insane actually belong to the pauper class.

Until about 150 years ago, however, English law made no provision for the care of the insane, other than the costly and cumbrous process of inquisition, and the clumsy provisions of the common law (which have been considered in the first chapter of this part) by which an insane person may be detained and restrained when—but only when—he is dangerous to himself or others. Such a system or rather want of system was terrible, and modern civilisation could not permit the law as to insanity to remain for ever in the very crude state above indicated, in which it had for centuries existed. Accordingly, about that period an alteration in it commenced, which has been by subsequent legislation developed into our present system. The earliest ideas for any improvement in the law as to insanity would seem, however, to have been suggested rather by a concern for the public safety than by any humane commiseration for the unfortunate objects of legislation themselves. About 1742, a statutory provision as to vagrant pauper lunatics first appears on the Statute Book, in one of the Vagrant Acts (17 George II, c. 5). This act provided that any two justices might cause any vagrant pauper lunatic to be apprehended, locked up in some secure place, *and there chained*; unless his settlement should prove to be in some other place, in which case he was to be removed to that place of settlement to undergo the same treatment there. This enactment may be regarded as the foundation of the legislation as to pauper lunatics, which is now so elaborate and humane. For some years after this, the subject does not appear, indeed, to have been further pursued. More than sixty years after the passing of the Act of 1742, the subject was at last, namely in 1805, followed up by an Act (45 George III, c. 96) which actually laid the foundation of the system of the establishment of Pauper Asylums in the counties and boroughs of England.

Moreover, about thirty-two years subsequently to the passing of the Act of 1742, to which reference has been made above, namely in 1774, regulation of private mad-houses became a subject of Parliamentary solicitude [14

Geo. III, c. 49]. It is needless to discuss the provisions of this now obsolete and superseded Act of 1774. But until this Act was passed these "private madhouses" had been subject to no legal supervision whatever, and the abuses and horrors which were enacted in them form an incident in the works of many well-known writers, and have been of late vividly told by Mr. Baring Gould in his novel "In the Roar of the Sea." However, this Act of 1774 [14 Geo. III, c. 49], which began the work, was, during about ninety years subsequently, followed by a succession of temporary Acts, by which "private madhouses" were subjected to supervision. At last provision was, in 1832, made for the *annual* appointment of Metropolitan Visitors in Lunacy. Thirteen years afterwards (*viz.* in 1845), chiefly in consequence of a valuable report which had been previously presented by this body in the year 1844, Parliament placed legislation as to private asylums upon a permanent footing by an Act [8 and 9 Vict., c. 100] which (as subsequently amended in 1853 by 16 and 17 Vict., c. 96, and later legislation) was in force till it was repealed by the legislation now contained in the Lunacy Act, 1890 [53 Vict., c. 5], which is moreover, in substance, a re-enactment of the provisions of the Act of 1845 (as that Act was amended by subsequent legislation) with the important addition of the intervention of a judicial authority in all private cases.

Legislation as to criminal lunatics commenced about 1800. At common law, an insane person is excused from the consequences of crime under the circumstances mentioned in a subsequent chapter of this work (see *post*, chapter on "Criminal Responsibility").

The old common law, in substance, provided that if a man of sound mind became insane after committing a criminal act, and before trial, he ought not to be tried; if a man became insane after trial, and before judgment, he ought not to have judgment pronounced against him; and one who becomes insane after judgment and before execution, ought not to be executed [see *Bl. Com.*, Book II, cap. ii]. But the old common law contained no further provisions on the subject. The *case of Hadfield*, who had shot

at King George III in Drury Lane Theatre, and had been found insane upon his trial on 26th June, 1800, immediately led to the passing of an Act [39 and 40 Geo. III, c. 94], which received the Royal Assent on the 28th July in the same year. The provisions of this statute will be set out below.

The scheme of legislation (other than that as to criminal lunatics), contained in the Lunacy Law, as thus amended, has, as will have been already gathered, since 1845 been carried into execution by means of the "Commissioners in Lunacy." It has long been found needful to work every scheme of modern legislation, containing any elaborate provisions for the protection of a special class, by means of "Commissioners" appointed to see that its provisions are duly carried out. The "Factory Acts" and the "Mines Regulation Acts" at once occur to every mind as familiar instances of this. Just as a body of "Inspectors" (who might equally well be called "Commissioners") under these Acts are engaged in seeing throughout the country that the humane provisions of the "Factory Acts" and of the "Mines Regulation Acts" are not neglected; so the business of the "Commissioners in Lunacy" is to see that due effect is given to the equally humane provisions of the "Lunacy Acts." The "Commissioners in Lunacy," too, supervise the carrying out of the Lunacy Acts just as the "Masters in Lunacy" and the Lord Chancellor's Visitors (*ante*, p. 74) exercise the details of the jurisdiction existing at Common Law, and exercised by the Court of Chancery, over lunatics so found by inquisition.

The "Commissioners in Lunacy" consist of three legal and three medical Commissioners, who are paid, and five honorary ones. The Commissioners have a central office in London, the present situation of which is at 19, Whitehall Place, S.W. Some of their number are, however, generally away, travelling the "circuits" into which the Commission has, for the purposes of the Lunacy Acts, divided all England and Wales; and while they are in any neighbourhood, visit the various county and borough asylums in the locality; registered hospitals and licensed houses in it; the lunatics confined in workhouses in it; and also single patients there,

other than "Chancery patients," or "lunatics so found by inquisition," as they are technically termed (who, it will be recollected, are, under the provisions already set out at p. 92, periodically visited by the Lord Chancellor's Visitors in Lunacy). At their London office, the Commissioners in Lunacy grant licenses for such private asylums as are situate within the Metropolitan area; and, from all England and Wales, receive copies of all certificates as to patients; grant leave for temporary absence of patients; receive (and these must, under a penalty of £20, be always sent to them unopened under sec. 41 of the Lunacy Act, 1890) letters addressed to them by patients; they also there receive notices of all alterations to licensed houses, of all discharges of asylum attendants or nurses for misconduct, and of the discharge or death of patients. In short, the Commissioners in Lunacy are at once the registrars of all important matters connected with insanity in England or Wales, and the guardians of all insane people (other than those supervised by the Court of Chancery) in those countries. They can, moreover, order prosecutions for any breach of the Lunacy Acts; or apply to the Lord Chancellor for an inquiry (*post*, chapter on "Statutory Orders") whenever they think that the property of an insane person, who is under their cognizance, is not being properly administered.

Such being an outline of the Lunacy Acts, and such the machinery for their due administration, it now remains to see what persons may be brought under the provisions of the Acts, and by what procedure this is effected.

Under the law, as it existed up to 1889, on the one hand, any person might be sent to an asylum merely on an order under the hand of any person, and the certificates of two medical men. On the other hand, a medical man who signed a certificate was subject to very serious liabilities if he chanced to make a mistake. The Act of 1889 (as repeated in the Act of 1890, which is itself amended by the Act of 1891, which has technically taken the place of the Act of 1889), altered all this by providing that, on the one hand, a person should not be sent to an asylum without an order signed by a "judicial authority," and, on the other hand, that a medical man who has signed a lunacy certificate shall

not be liable to any civil or criminal proceedings where he has acted in good faith and with reasonable care.

Pauper, wandering, and criminal lunatics, indeed, enjoyed, and still enjoy, a privilege not possessed by the rest of society. For *they* at least cannot be sent to an asylum, as falling under either of those classes, except on the order of the proper tribunal, which can only exercise its jurisdiction after seeing them.

The Lunacy Act of 1890 extended to every class in the community, the legal protection against being confined as insane, which had up to that time been exclusively enjoyed by pauper, wandering, and criminal lunatics. This legal protection is afforded by its being required that, except in urgent cases, no one shall be what is popularly called locked up (an expression for being treated as a lunatic), until a "judicial authority" shall have on petition duly presented to it made an order for his being so treated.

The passing of the Lunacy Act, 1890, was made the opportunity for largely consolidating the modern statutory law as to lunacy. Under the law as it now stands there are six methods, by either of which a supposed "lunatic" may be subjected to detention and treatment. These are: (1) under an urgency order (which is usually made by a relative on the certificate of one single medical man, and is temporary only); (2) under a reception order obtained on petition to a judicial authority; (3) under a summary reception order made by a magistrate where a "lunatic" is wandering, pauper, or neglected; (4) under an order made by the Commissioners in Lunacy; (5) under an order made under the Criminal Lunacy Acts; or (6) under an order made under the Idiots Act. The statutory provisions governing the four first mentioned of these orders are now consolidated in the Lunacy Act, 1890. The fifth and sixth of such orders have each been the subject of separate legislation respectively contained in the Criminal Lunacy Acts and the Idiots Act, 1886.

It will be most convenient to discuss the subject of orders under the modern enactments which have been mentioned above with reference to the classes of persons as to whom orders for their detention and treatment as insane may be

obtained. These are (A) private patients ; (B) wandering or neglected lunatics ; (C) pauper lunatics ; (D) criminal lunatics ; and (E) idiots. Each of these classes will form the subject of a separate section, and the sections will follow each other in the sequence just indicated.

SECTION A.—*Private Patients.*

Private patients, whom it becomes necessary to place under the restraint authorised by the lunacy laws, may, in acute cases which call for immediate treatment, be made the subject of an "Urgency Order." In ordinary cases, however, private patients must be made the subject of a "Reception Order," obtained upon petition to a "Judicial authority."

§ 1. *Urgency Orders.*—Where it is essential either for the patient's own welfare, or for the public safety, that a patient should be "forthwith" placed under care and treatment, an "Urgency Order" may be at once signed ; the husband, wife, or a relative (if possible) of the alleged insane person being the person signing it ; while if anyone other than one of those above named signs it, a statement of the reasons for this must be contained in it. The person signing an Urgency Order must, moreover, be over twenty-one, and have seen the alleged lunatic within two days before. Such an order must, too, be accompanied by one (note that one is sufficient) medical certificate, the signer of which must have examined the patient not more than two clear* days before admission [Lunacy Act, sec. 29 (3)], which besides being in the usual form [for which see Lunacy Act, 1890, sched. 2, forms 8 and 9], must, in addition, expressly state that either for the patient's own good or for the public safety it is expedient that such patient should be forthwith placed under care and control ; such Urgency Order must also be accompanied by a statement of particulars. The forms

* In law "clear days" are always reckoned exclusively of the day on which a document is signed and of that on which it expires ; for instance, an Urgency certificate signed on a Monday is in force during the whole of the Tuesday and Wednesday, and expires on the Thursday.

both for the Urgency Order and Statement of Particulars are given in the Lunacy Act, 1890.

An Urgency Order only remains in force for seven days, or until any petition for a Reception Order that may be pending has been disposed of.

Reference should be made to the section of the Lunacy Act itself for a detailed enumeration of its requirements [see generally Lunacy Act, 1890, sec. 11].

An Urgency Order is a sufficient authority to take, convey, and hold a person of unsound mind.

Where an Urgency Order is resorted to, a proper petition must *within seven days* of the date of the order be presented in the usual way (which will be detailed presently) to a "Judicial Authority" (which is defined *infra*, § 2). Such petition must be supported by two new certificates in the usual form by medical men who have seen the patient within seven clear* days. One of such certificates may, however, be given by the medical man who signed that accompanying the Urgency Order, and may be founded upon the same interview as the urgency certificate. Moreover, its contents may be also identical.

§ 2. *A Reception Order by a Judicial Authority.*—Under the present law a person (other than a wandering, pauper, or criminal lunatic), unless he be a fit subject for an Urgency Order, can only be brought under the operation of the Lunacy Laws by a petition for an order for his admission into an asylum being presented to a Judicial Authority, by a proper person, and by an order being duly made thereon by such Judicial Authority.

The petition must, if possible, be presented by a relative or the wife of the alleged insane person ; and, if it be not so presented, it must state the reasons why it is not, and also the petitioner's connection with the person alleged to be insane [Lunacy Act, 1890, sec. 5]. The petitioner must be over twenty-one, must have seen the alleged lunatic within fourteen days, and must undertake to visit him or have him visited at least every six months [*ibid.*].

A "Judicial Authority" may be a Justice who has been

* See former note as to "clear days."

specially appointed by his fellows, a local Stipendiary, or the County Court Judge [see Lunacy Act, 1890, sec. 9].*

A Justice of the Peace who has been specially appointed to exercise the powers of the Lunacy Acts may exercise the power of a Judicial Authority, notwithstanding that he may not have jurisdiction in the place where the lunatic or alleged lunatic is [see Lunacy Act, 1891, sec. 24, subsec. 1]. After a lunatic has been received under the Order of a Judicial Authority, jurisdiction for the purposes of sec. 8 of the Lunacy Act, 1890 (*i. e.* for the purposes of examining the patient in case he has not been previously examined by the Judicial Authority who made the Order), may be exercised by a Justice who has been specially appointed under the Lunacy Act, 1890, as a Judicial Authority to exercise the powers under the Act, notwithstanding that he may not have jurisdiction in the place where the lunatic, or alleged lunatic, is [sec. 8, subsec. 4]. Moreover a Reception Order made by a Justice not specially appointed becomes valid if it is within fourteen days after its date approved and signed by a Judicial Authority [see Lunacy Act, 1891, sec. 24, subsec. 1]. There ought to be, but is not, some provision or machinery securing that a duly qualified "Judicial Authority" shall always be at hand (especially in London in the autumn), and there ought to be some *official* list of "Judicial Authorities" procurable from the Commissioners in Lunacy, the Home Office, and other Government Departments.

The petition must be accompanied by a statement [for form see schedule to Lunacy Act] and by two medical certificates (it will be recollected that for an urgency order the certificate of *one* medical man is enough) upon separate sheets of paper [Lunacy Act, 1890, sec. 4]. The responsibility of those who sign them or the "statement" will be considered presently.

Upon the presentation of the petition, the "Judicial Authority" must† consider the matter at once, and, if satisfied

* N.B.—There is a *Directory of Justices in Lunacy* published by Ball and Sons. The names of the specially appointed justices for any place can also be obtained from the Clerk of the Peace for each county.

† One of the greatest difficulties in the working of the Act is to get magis-

that an order may be properly made forthwith, may make an order accordingly. If not so satisfied, he must appoint as early a time as practicable, not being more than seven days after the presentation of the petition, for the consideration thereof; when he may make such other further inquiries as he shall think fit. Notice must be given to the petitioner of the time and place appointed. The Judicial Authority may either make inquiries as to the alleged lunatic, or, if he thinks it necessary so to do, visit him himself [Lunacy Act, 1890, sec. 6].*

The form of the medical certificate upon which an order may be founded is given in Form 8 in the Second Schedule to the Lunacy Act, 1890.†

With regard to such certificate the following practical remarks may be of utility. The date of the examination by the certifying practitioner must be shown to have been not more than seven clear‡ days before the date of the presentation of the petition for the Reception Order; or in cases of an Urgency Order not more than two clear days before that date [see Lunacy Act, 1890, sec. 29]. Then, again, the *place* where the examination took place must be as accurately described as possible. Therefore, where these exist, the omission of the name of the street, and of the number of

trates, to whom petitions for Reception Orders are presented, to consider them promptly. Some Justices actually refuse to act, saying they really know nothing about these matters. Others (Stipendiary Magistrates and County Court Judges availing themselves of the provision contained in Lunacy Act, 1890, § 9 [3], and saying that the matter will interfere with their ordinary jurisdiction) put off hearing petitions, or will not act without having first seen the patient (a very proper precaution perhaps), though they take no prompt steps to do thus; or require the certifying medical men to personally attend, though they make no appointment for that purpose. Yet the legal aspect of the matter is that the Act [Lunacy Act, 1890, sec. 6] says that the Judicial Authority "shall" at once consider the matter (so that in strictness a *Mandamus* may be obtained against a J.P. selected as a Judicial Authority who declines to hear a petition). Viewing the matter in its medical aspect, there is no need to emphasise the consideration of the grave mischief which may arise in cases of insanity from even a short delay.

* See as to this note † to p. 108.

† The use of the substance of this form is probably compulsory [see *Shuttleworth's case* (1846), *infra*, which appears on this point to be more applicable to the present Lunacy Act, 1890, than *in re Fell* (1845), *infra*].

‡ See previous note, p. 101.

the house, may be a fatal defect, and invalidate the certificate [see *re Greenwood* (1854)]. Moreover, the statement in the certificate of the grounds upon which the certifying medical man has formed his opinion must be precise and specific. A broad general statement of a fact not necessarily indicative of insanity, as for instance that the patient "has a general suspicion of the motives of every person," or "makes unfounded statements in every conversation," would probably be insufficient [see per Patteson, J., in *re Fell* (1845)]. But a statement furnishing specific details of some facts which necessarily form or are strong symptoms of insanity is sufficient—as, for example, that the patient "labours under delusions of various kinds and is dirty and indecent in the extreme" [see *re Shuttleworth*, 1846]. The case of *Lowe v. Fox* (1887), though not directly in point and laying down no new principle, may, if necessary, perhaps be referred to as throwing light on the subject.* Moreover, there is no part of the certificate on which medical men (especially country ones) are more loose and apt to fall into ludicrous errors than the portion which distinguishes "Facts indicating insanity observed by myself" from "Facts communicated by others." Thus in practice a certificate has been known to be filled up under the head of "Facts indicative of insanity observed by myself" with the remark, "Reads the Bible constantly," as if a frequent reading of that Book were of itself a necessary indication of insanity; or with the information, "His mother tells me he is very restless at nights." The facts thus vouched for neither purporting to be observed by the certifying practitioner himself nor a necessary indication of insanity.

Moreover, the facts observed ought to be stated in some detail, and followed by some definite, well-considered statement that they are untrue. A good example of the care

* In this case the order under Sched. II, Form 2, of the Lunacy Act, 1890 [there made under the (repealed) statute 16 and 17 Vict., c. 96, sec. 4, Sched. A, No. 1], signed by the person (here the husband) requesting admission to a private asylum, the question, "Whether first attack?" was answered, "For the last twenty years has been subject to what is termed hysteria;" and the question, "When and where previously under care and treatment?" answered, "During the period of twenty years has been constantly under treatment,"—and the answers were held sufficient.

needful in both these respects was afforded by a medical man who, having a patient suffering from the delusion that his feet were each 100 yards long, filled up the certificate simply, "fancies that he has large feet." This certificate was, of course, sent back, accompanied by suggestions to the effect above pointed out, and intimating that the least that could be accepted was some statement to the effect "the same being untrue." The practitioner in question chanced, on the next occasion, to have to certify a patient who was violently maniacal, and during his ravings used the foulest language, and being himself lost to any sense of humour, and desiring to take the hint previously conveyed to him, he certified these facts, and as an example added, "called me an infernal old fool, *the same being untrue*"!!

No valid Reception Order, it must always be remembered, can be made upon a certificate founded only upon facts communicated by others. The two certificates must, moreover, be given by medical men who have, within seven days before the presentation of the petition, made separate and independent examinations of the patient, and are not in any way connected either with the petitioner, with one another, or with the person who is to receive the patient [Lunacy Act, 1890, sec. 32].

A wilful misstatement of any material fact, in a certificate or report of bodily or mental condition, is a misdemeanour [see Lunacy Act, 1890, sec. 317]. But no prosecution can take place, except by order of the Attorney-General, of the Commissioners in Lunacy, or of the Public Prosecutor [*ibid.*]. Statements made in the medical certificate are equivalent to evidence given on oath [Lunacy Act, sec. 28, subsec. 4].

The present will be a convenient place at which to shortly remark upon the responsibilities of those who take part in obtaining a Reception Order (including in this consideration an Urgency Order), especially those of doctors who sign the medical certificates.

Up to the year 1889, medical men who signed certificates under the Lunacy Acts, thereby laid themselves open to a great deal of annoyance. For, till then, the case of *Hall v. Semple* (1862), and other legal decisions, had clearly established that a medical man who signed a certificate under the Lunacy Acts to the effect that a person, whom a jury might think

sane, was insane, without taking due care and making due inquiries, was liable for the consequences; and that he was none the less liable for the want of such due care and inquiries because he acted *bonâ fide*. Juries are prone to find everyone sane who brings an action to assert that he is so; and also to say that anyone who has pronounced a man to be insane, whom they think sane, can only have done so without exercising proper care. The effect of the law, as it formerly existed, was that very few medical men, except a few specialists in lunacy, cared to sign lunacy certificates at all, and it became difficult, even in the most obvious cases, to get a certificate (under the Lunacy Acts) signed. Since 1889 it has, however, been provided (the existing enactment on the subject being contained in sec. 330 of the Lunacy Act, 1890) that both medical men who certify under the Lunacy Act, as well as others, who act in pursuance of that Act, shall not be liable to proceedings, either criminal or civil, if they act in good faith, and with reasonable care; and a judge of the High Court is empowered to stay any proceedings if satisfied on this point.

The protection afforded by the Lunacy Act appears to extend only to persons doing acts with a view to assist others to obtain an order under the Act, or to persons acting under such an order; and not to protect the person actually signing such an order [see *Fletcher v. Fletcher* (1859)].

Moreover, the protection of the section extends only to persons acting "in good faith and with reasonable care." Therefore, it is apprehended that a medical man, who certifies without ever having seen the alleged lunatic, would still very properly be liable [as he was in *Anderson v. Burrows* (1830)].

A defence, justifying under the Act, need not allege that the plaintiff *actually was* a lunatic, but it is enough to allege proceedings under the Act [see *Norris v. Seed* (1849)].

To return, however, from this long digression as to the liabilities and responsibilities of medical men, who sign certificates, and of those who act upon an order obtained under the Lunacy Acts, which it has first been necessary to make, to the history of events and course of procedure where the machinery of the Lunacy Acts is put into force.

The petition for a Reception Order is heard privately, no one (unless by special order of the Judicial Authority) being present save the petitioner, the alleged lunatic, one person appointed by him, and the persons signing the medical certificates ; * all persons who are present, except the alleged lunatic and the person appointed by him to act in his behalf, being bound to secrecy [Lunacy Act, 1890, sec. 6].

On the hearing of a petition, the evidence must, it would appear [by Lunacy Act, 1890, sec. 6, subsec. 1], be confined to the proof of the facts mentioned in the petition and accompanying Statement of Particulars, the medical certificates, and such further evidence as is afforded by (if the Judicial Authority make one) a visit to the alleged lunatic. The medical witnesses ought not to be placed on oath, as [by Lunacy Act, 1890, sec. 23, subsec. 4] every medical certificate for the purposes of the Lunacy Act is equivalent to evidence on oath. The Judicial Authority may, if he think fit, himself visit the alleged lunatic [Lunacy Act, 1890, sec. 6, subsec. 2].† Whether he do this or not, the Judicial Authority may, on the hearing of a petition for a Reception Order, either make an order (for form of which see Lunacy Act, 1890, Sched. II, Form 3); or adjourn the hearing, giving notice to, and also summoning before him, all persons whom he thinks fit [Lunacy Act, 1890, sec. 6]; or dismiss the petition. The formal dismissal of a petition here spoken of [Lunacy Act, 1890, sec. 7] is also spoken of in the same section of the Act as a “refusing” to make an order. It is, of course, a very different thing from declining to hear a petition at all on any of the grounds previously spoken of in the note † to p. 103 as frequently assigned as excuses. If the Judicial Authority dismiss the petition, a copy of his reasons

* These persons need not, of course, all be present in every case ; it is sufficient in the first instance for the petitioner only to be present, the rest is optional to the justice.

† This right ought to be exercised by the Judicial Authority very cautiously, and, as a rule, only after consultation with and the approval of the medical attendants on the patient; for the visit of a magistrate may seriously alarm and upset an insane patient, who may not improbably fancy that he is about to be punished in some way or made a pauper lunatic.

for doing so must be given to the petitioner, and one also sent to the Commissioners [*ibid.*].

At a metropolitan police court a fee of 2s. is payable upon the order as on "an order directed by Statute." At other police courts a small fee is usually justified by some provision in the local table of fees authorised by the Home Secretary.

Supposing a Reception Order to be made by the Judicial Authority, where the order does not state that the lunatic has been personally seen by the Judicial Authority, he has a right to be taken before or visited by a Judicial Authority, unless it be, within twenty-four hours after his reception, medically certified that this would be injurious to him; and a notice [Form 6] of this right must be served upon him within twenty-four hours after admission, and he can within a week assert or desire to exercise it in a form [Form 7] and in the way indicated in the Act [Lunacy Act, 1890, sec. 8].

After the making of a Reception Order, the patient named in it may be placed under care in various ways, of each of which it will be convenient to speak in a separate paragraph. A Reception Order does not endure for ever, but expires at the periods named in the Act, unless kept alive as is therein indicated. These provisions are too long and intricate to be referred to here, but should be carefully studied [see Lunacy Act, 1890, sec. 38, and Lunacy Act, 1891, sec. 7].

§ 3. *Reception in a Licensed Private House or Registered Hospitals.*—"Private asylums," as they are frequently called, properly consist only of "Licensed houses." But under the head of "Private asylums" given above are included Registered Hospitals, that is, institutions managed by governing bodies, where lunatics are supported wholly or partly by voluntary contributions, or by the excess of the payments of some patients, beyond their cost, being devoted to the maintenance of others [see Lunacy Act, 1890, sec. 341], as well as Private Asylums. Houses are licensed [Lunacy Act, 1890, sec. 210], but "Hospitals" are registered [Lunacy Act, 1890, sec. 231]. Every Hospital must have a medical practitioner *resident* in it as superintendent [Lunacy Act, 1890, sec. 230].

Licensed houses in the Metropolis and its suburbs [see Lunacy Act, 1890, Sched. II] must be licensed by the Commissioners in Lunacy; elsewhere they must be licensed by the justices in Quarter Sessions [Lunacy Act, 1890, sec. 208]. The policy of the Lunacy Act, 1890, is to extinguish private asylums, and, consequently, no licences for new asylums will be granted, but only conditional licences for the extensions of asylums existing at the passing of the Act [see Lunacy Act, 1890, sec. 207]. The Act contains provisions as to the grant [Lunacy Act, 1890, secs. 210—219] and revocation [Lunacy Act, 1890, secs. 221, 222] of licences.

The “Private asylum” or “Registered hospital” to which the patient is conveyed* will, in practice, be one with the proprietors or authorities of which his friends have previously arranged for his reception, and the terms thereof.

On arrival at the asylum, the Reception Order, the certificates on which it is founded, and the statement that accompanies it, will all be carefully examined by one of the medical officers attached to the asylum, to see that the formalities, already pointed out to be necessary, have been complied with. For it must be noted that the mere fact of a Judicial Authority having signed an Order is not of itself any protection to the person receiving the patient named in such Order. The person receiving the patient must not only see that the Judicial Authority who has signed the Order is properly qualified as a Judicial Authority, but he must also be satisfied that the Order was on the face of it in proper form when signed. Unfortunately, magistrates sometimes sign Orders before having essential dates filled in, or with other blanks in them, and some few even habitually sign Orders which are altogether in blank when signed, and are left by them in the hands of their clerk. Any one of these irregularities renders the Reception Order irregular and void. However, since the passing of § 24 of the Lunacy Act, 1891 [54 and 55 Vict., c. 65], a Justice of the Peace specially appointed under the Lunacy Act may sign Orders in respect of persons over

* The procedure to be followed if he be taken to a County or Borough Asylum or placed in a private house forms the subject of the two following sections of the present chapter.

whom they have no Jurisdiction at all. For instance, a Judicial Authority for Middlesex can now make a valid Reception Order with regard to a resident on the Surrey side of the Thames, and a like principle applies in similar cases. Again, a J.P. for a Borough can now make a valid Reception Order as to a resident in the adjoining county. A Justice of the Peace for a county could always exercise jurisdiction in respect of persons resident in a borough which is within the county. Any carelessness by a Judicial Authority signing a Reception Order may occasion much mischief and inflict great suffering and inconvenience upon both the patient and his friends. But the law is jealous for the protection of persons who it fears may get sent into confinement as insane without really being so. Its requirements must therefore, as a rule, be strictly complied with, whatever the consequences to patients or their friends.

If the papers under which he is brought appear to be in reasonable order, the patient is formally "admitted" into the asylum. On his admission such patient's name, and certain other particulars, are entered in the "Register of Patients" [Lunacy Rules,* rules 1 and 1 b, 2]; within one clear day afterwards, notice of the admission, with a copy of the Reception Order and of the medical certificates accompanying it, must be sent to the Commissioners in Lunacy.

There is power, however, if the certificates turn out formally faulty, to amend them, within fourteen days after the reception of the patient [Lunacy Act, 1890, sec. 34]. Such corrections must be sanctioned by the Commissioners in Lunacy, and agreed to by the Judicial Authority, and should the corrections themselves prove faulty, the Commissioners may order the patient's discharge [*ibid.*].

Assuming, however, that the papers necessary on the admission of a patient prove to be in order, then, after two

* The Rules cited as above are officially described as "Rules made by the Commissioners in Lunacy with the approval of the Lord Chancellor." These "Lunacy Rules" relate to the treatment of the persons of the insane by those who have charge of them. They must not be confused with "The Rules in Lunacy, 1892," which govern the practice of the Chancery Division of the High Court in its administration of the *property* of persons under the jurisdiction of the Court, which are not reprinted in the Appendix.

and within seven days, the Commissioners must be provided with a "medical statement" [Lunacy Rules, r. 7; sched. to Lunacy Rules, Form 7]. In the case of a "Private Asylum," which is licensed by Justices, similar papers must be sent to the Clerk to the Visitors. At the end of a month, the Commissioners must be furnished with a medical report [sched. to Lunacy Rules, Form 9, and see generally Lunacy Act, 1890, sec. 39], of which, in the case of Licensed houses, a copy must also be sent to the Visitors.

It will be foreign to the scope and purpose of this work to give the details of asylum management and discipline.* Ill-treatment of patients is specially provided against [see Lunacy Act, 1890, secs. 322—328; Seventh, Eighth (pp. 6, 36), and Ninth (pp. 40, 41), and Seventeenth (p. 38) Reports of Commissioners; and also *R. v. Hill* (1851)]; and the Register of Mechanical Restraint† is a further safeguard as to this, especially as copies of it have to be sent to the Commissioners in Lunacy each quarter [Lunacy Rules, 1890, r. 16].

This, too, would appear to be a convenient place to mention that all letters addressed by a patient to either the Lord Chancellor, a Judge in Lunacy, a Secretary of State, the Commissioners in Lunacy, the person who signed the Reception Order in lunacy, to any Visitor (Chancery or otherwise), or to any member of the Visiting Committee, must be forwarded to the addressee unopened, under a penalty of £20 for each breach of the Act [Lunacy Act, 1890, sec. 41]. If a patient escape, notice of such escape must be sent to the Commissioners and, if the house be a licensed one, to

* It may, however, be mentioned that the Lunacy Rules, 1890, require that there be kept in every asylum the following books, viz. (a) a visitor's book; (b) a register of patients; (c) a medical journal; (d) a register of mechanical restraint; (e) a medical case book; (f) a register of removals, discharges, and deaths; and in every Hospital and Licensed house, in addition, a patient's book and a register of voluntary boarders. All these books must be in prescribed forms; the entries in the medical journal must be signed by the person making the entry [Lunacy Rules, 1890, r. 9], and, in recent cases, made at not longer intervals than a week [Lunacy Rules, 1890, r. 10].

† The Commissioners define "mechanical restraint" as every instrument or appliance whereby the movements of the body or of any of the limbs of a patient are restrained or impeded (see order of 9th April, 1890).

the Clerk to the Visitors. But the escaping patient may be retaken on the original order, &c., at any time within fourteen days [see Lunacy Act, 1890, sec. 85].

A patient may be taken for his health to a specified place, or to travel in England, or may be let out by the medical officer, of his own authority, for not more than forty-eight hours [see Lunacy Act, 1890, sec. 55 ; as amended by Lunacy Act, 1891, sec. 9, subsec. 1], or he may be transferred to another asylum [Lunacy Act, 1890, secs. 59, 70].

Anyone who thinks it necessary may apply to have a patient specially examined ; but it is optional with the Commissioners to grant or refuse this [Lunacy Act, 1890, sec. 49].

On a patient's recovery, notice of it must be forthwith given to the person who signed the Reception Order, or who made the last payment on account of such patient (as the case may be), and if the patient be not then removed within seven days he must be discharged [Lunacy Act, 1890, sec. 83]. A discharge may also, whether the patient be recovered or not, be made at the instance of the person who signed the Reception Order, or, if he cannot act, or be dead, his duly accredited representative [Lunacy Act, 1890, secs. 72—74], subject, if the patient be dangerous, to the consent of the Commissioners or of the Visitors of the asylum. Moreover, the Commissioners have power to discharge (not of course a patient so found by Inquisition) any patient confined in a hospital or licensed house who appears to them to be detained without sufficient cause as insane [Lunacy Act, 1890, secs. 75—78].

On the death of a patient in a Private Asylum, a statement of the cause of death, with the name of anyone then present, must be signed by the medical attendant ; and within forty-eight hours of the death a certified copy of such certificate must be sent to the Commissioners ; to the relation named in the Reception Order ; to the district Registrar of deaths ; and (if the house be a licensed one) also to the Clerk of the Visitors. The death must also be entered in the register and in the medical case book [Lunacy Rules, 1890, r. 24]. The coroner also has power, on receiving notice of the death within his district, if he con-

siders that any reasonable suspicion attends the matter, to hold an inquest [see Lunacy Act, 1890, sec. 84].

§ 4. *Reception in a County or Borough Asylum.*—The policy of the modern Lunacy Law unquestionably is to gradually extinguish "Private Asylums," and by doing so eventually to bring about the reception of *all* insane persons into public institutions provided for the insane. In furtherance of this policy, a Local Authority may provide asylum accommodation for both pauper and private patients, either together or in separate asylums [Lunacy Act, 1890, sec. 241].

Moreover, in *any* case where it appears to the Visiting Committee of *any* asylum (this, of course, including a County or Borough asylum) that such asylum is more than sufficient for the accommodation of the paupers from the locality for which it has been built, they have power to resolve to admit into it non-pauper patients [Lunacy Act, 1890, sec. 271], and also paupers from other places [Lunacy Act, 1890, sec. 270]. Speaking generally, the reception of private patients into any asylum may be "upon such terms as to payment and accommodation as the Visiting Committee think fit" [Lunacy Act, 1890, sec. 271].

Further, all enactments as to the conditions on which such lunatics may be received into hospitals or licensed houses are expressly made applicable to private patients received into such asylums [*ibid.*]. The formalities which take place on the reception of a non-pauper patient into a County or Borough Asylum are the same as those which take place when he is admitted into a Private Asylum or Registered Hospital (as to which see *supra*, § 3). So also (again speaking generally) the various enactments as to the protection of such patients from ill-treatment, and as to their escape and recapture, transfer, temporary absences, discharge, and death, which have been detailed in the preceding section of this chapter (under the head "Reception in Private Asylums and Registered Hospitals"), are applicable to patients received there [Lunacy Act, 1890, secs. 12, 28—37, 51, 56, 59, 70, 72, 74, 78, 79, 82, 205, and 322].

In particular, the requirement that patient's letters ad-

dressed to certain persons should be forwarded unopened (*ante*, § 3) must be carefully borne in mind.

The clerk of a County or Borough Asylum which receives non-pauper patients under the provisions set forth above must, within fifteen days after 1st January and 1st July in each year, send lists of the non-pauper patients so received to the Commissioners in Lunacy, and to the Clerk of the Local Authority to which the asylum belongs [see Lunacy Rules, 1890, r. 25].

§ 5. *Reception of Single Patients in Private Dwellings.*—It often happens that the relatives of an insane person are reluctant, on account of the slur which sending a member of a family to an asylum is supposed to cast upon the other members of it, to place such person in an asylum, and prefer either to take charge of him themselves with or without profit, or to send him on similar terms to some charitable or religious institution which is not an institution for lunatics.

If, however, it come to the knowledge of the Commissioners in Lunacy that the person is gratuitously detained or treated as a lunatic, without a proper Reception Order and Certificates, they may require a report from a medical practitioner to be furnished within a given time, may themselves visit him, and may send the medical report to the Lord Chancellor, who may make an order for such person's removal to an asylum [see Lunacy Act, 1890, sec. 206].

If arrangements cannot be made with any of the friends or relatives of an insane person to take charge of him gratuitously, and yet it is not wished to send him to an asylum, he may be placed to board in the house of some person who is willing to receive him in return for a stipulated periodical payment. It is, indeed, common for medical men and others to receive patients into their houses under some such arrangement. If the person who receives an insane person only receive one lunatic, no license is required by him [Lunacy Act, 1890, sec. 315, subsec. 2]. Indeed the Commissioners in Lunacy have power (which, however, is in practice only very sparingly exercised) under "special circumstances" to allow the same person to receive a second patient without a license [Lunacy Act, 1890, sec. 46].

But a single patient cannot, if he be taken for payment, be lawfully received and taken charge of without a proper Reception Order, Statement, and Medical Certificates, such as are necessary for Hospitals and Licensed Houses, being sent with him. Before 1889, a request by a relative was sufficient. However, any certificates sent with the patient, may, as in other cases, be corrected at any time within fourteen days after their signature.

Exact copies of the certificates must, as in the case of patients received into "Private Asylums" (*ante*, Section A, § 3), be sent to the Commissioners in Lunacy, with notice of admission; and after the second, and before the seventh, day, a medical statement as to the bodily and mental health of the patient must further be sent to them. Every single patient must have a regular medical attendant, who must visit the patient fortnightly, unless a special order, permitting him to do so less often, be made by the Commissioners [Lunacy Act, 1890, sec. 44 (1)]. The medical attendant must keep and sign, each time he visits the patient, a "Medical Journal" [Lunacy Rules, 1890, r. 1] in the proper form [Form 3 to schedule to Lunacy Rules, 1890], at the beginning of which a short history of the case must be entered [Lunacy Rules, 1890, r. 14]. He must (1) at the end of the first month after the patient's reception make a report to the Commissioners [Lunacy Act, 1890, sec. 39]; (2) make a yearly report at a given date (10th January) every year [Lunacy Rules, 1890, r. 15], and (3) immediately before the end of each of certain periods make a special report to the Commissioners, which report must be sent to the Commissioners in Lunacy not more than a month and not less than seven days *before* the end of each period mentioned in the Act, otherwise the reception order will expire [Lunacy Act, 1890, Sched. 2, 13, sec. 38, subsec. 4]. Every "single patient" is visited by one or more of the Commissioners in Lunacy at least once a year [Lunacy Act, 1890, sec. 198].

Commissioners in Lunacy may not only direct how often a private patient is to be visited by a medical practitioner, but also may at any time require a report from the regular medical attendant [Lunacy Act, 1890, sec. 45]. The requirement that all letters addressed by patients to certain

persons (*ante*, Section A, § 3) must, under a penalty of £20, be forwarded to the addressees unopened, applies to single patients in private houses, and must never be forgotten by those having charge of them.

Speaking generally, a private patient, resident as a single patient in an unlicensed house, is subject to much the same regulations as a patient in a Private Asylum which we have already considered in some detail (Section A, *supra*, § 3). It must in particular be kept in mind that, if such patient escapes, a recapture, under the old papers, can only be lawfully made within fourteen days from the escape; that the patient cannot be absent (*e.g.* on a visit to a friend, or to the seaside) without the license of the Commissioners (who will, in such license, specify at what place the absence is to be), to whom also any proposed change of residence must be notified; and that the discharge or death of the patient gives occasion for the formalities already mentioned.

SECTION B.—*Neglected or Wandering Lunatics.*

A lunatic who, though not a pauper, is neglected or cruelly treated, or who becomes a wandering lunatic, is liable to be sent to an asylum by a Justice of the Peace.

In the first place persons who are not paupers,* if they be neglected or cruelly treated, are dealt with under sec. 13 of the Lunacy Act, 1890. By this enactment every constable, relieving officer, or overseer, who “has knowledge” that any person within his Parish or District who is not a pauper, and not wandering, is deemed a lunatic, but is either “not under proper care and control, or is cruelly treated and neglected by those having charge of him, must within three days give information to some Justice who is a Judicial Authority” under the Lunacy Act (as to who is a Judicial Authority see *ante*, Section A, § 2); the Justice may then visit the lunatic, and, whether he does this or not, may send two

* The procedure to be followed in the case of paupers whom it is desired to treat as such, and who are from any cause (whether ill-treatment or neglect of friends or any other reason) fit persons to be sent to an asylum, is dealt with under the head “Pauper Lunatics” (*post*, Section C).

medical practitioners to examine him and certify as to his mental condition, after which he has the same power as if a Petition for a Reception Order had been presented. If upon the certificates, and such other inquiry as he thinks fit, he is satisfied as to the person being a lunatic, as to the neglect or cruelty, and as to the lunatic being "a proper person to be under care and treatment," the magistrate may make an order sending such person to any asylum to which he might be sent if a pauper; and the person giving the information must carry the order out [see Lunacy Act, 1890, sec. 13].

In the next place every lunatic *whether a pauper or not* who is "wandering at large" becomes liable to provisions under which every constable, relieving officer, and overseer, within whose parish or district he is, must immediately apprehend him, and take him before a magistrate; and any magistrate may require such overseer, &c., to do this, [Lunacy Act, 1890, sec. 15].

A magistrate, on a wandering lunatic being brought before him, may make what is called a "Summary Reception Order" as to him, and possesses in all respects exactly the same jurisdiction as in the case of a pauper lunatic, as to which see head "Pauper Lunatics" (*post*, Section c).

SECTION C.—*Pauper Lunatics.*

Pauper lunatics may be either paupers who become lunatic, or lunatics who, in consequence of their affliction, become paupers [*Fry on Lunacy*, p. 165].

The procedure to send a pauper to a pauper asylum is briefly as follows. Every medical officer of a Union, who has knowledge that a pauper resident within his district is a lunatic, and a fit person to be sent to an asylum, must, under penalty of £10 [Lunacy Act, 1890, sec. 320] within three days give notice thereof to the Relieving Officer or (if there be none) to the Overseer [Lunacy Act, 1890, sec. 14].

A relieving officer, or an overseer, on becoming aware, either by notice from the medical officer, or otherwise, that any pauper resident in the parish is a "lunatic," must,

under a penalty of £10 [Lunacy Act, 1890, sec. 320], within three days give notice to a Justice of the Peace. A magistrate, on being thus communicated with, must then deal with the case within three days, by examining the supposed lunatic.

As to the examination, it is to be noted that the magistrate must call in the aid of a medical man, and make such inquiries as he himself thinks advisable [Lunacy Act, 1890, sec. 16].

The magistrate and the medical man must both make an examination of the alleged lunatic. Such examination must be a real one by both of them, but the conduct of it appears to be left largely to the discretion of the magistrate, who will, however, be no doubt usually guided by the surrounding circumstances. [See on this question *R. v. Whitfield* (1885).] The examination may, after a sworn information or notice to such magistrate (but not, as formerly, of his own mere knowledge and notion), be taken by the magistrate at the alleged lunatic's own house, or at any other convenient place.

After having taken such examination, the magistrate may, if satisfied that the alleged lunatic is in actual receipt of parish relief, or in such circumstances as to require relief for his proper care [Lunacy Act, 1890, sec. 18] deal with the case in any one of these ways, namely by sending the pauper (1) to an asylum either public or private; (2) to a work-house; or (3) to the custody of friends with out-door relief. Practically, it is necessary that the magistrate and the medical man who has been called in should agree upon the course which is to be pursued. For, on the one hand, the Justice cannot make an order without a certificate from the medical man recommending the treatment thereby ordered; and on the other the medical man cannot *compel* the Justice to make an order in accordance with his opinion and report.

§ 1. *The Reception of Pauper Lunatics in a County or Borough Asylum.*—The first Act giving Local Authorities power to establish Pauper Lunatic Asylums was passed in 1808 [48 George III, cap. 96]. This Act was first

amended, and then from time to time replaced, by various subsequent statutes, but the principle established by it continued in force down to the year 1845. Under it, the Authorities had an absolute discretion, as to whether they would establish asylums or not,* but in 1845 it was (by 8 and 9 Vict., cap. 126) rendered compulsory upon County and Borough Justices to provide an asylum within three years after they had been required by the Home Secretary so to do. As, however, many counties still failed to provide asylums, while only four boroughs did so, it was, in 1853 (by 16 and 17 Vict., cap. 97), rendered compulsory upon the Justices of every county, and of every borough which, at the time of the passing of the Act of 1845 had more than six Justices and a Recorder, to provide either an asylum separately, or jointly with other Authorities.

It would be foreign to the purpose of this work to enter upon the consideration of any of the elaborate provisions which are contained in the "Lunacy Act, 1890" [see Lunacy Act, 1890, secs. 270—278], as to the constitution, appointment of officers, and management of powers, of County Asylums [see as to this *Fry on Lunacy*, 3rd edit., p. 51, *et seq.*].

We are, however, concerned with seeing who may be the inmates of such an institution, and the mode of their admission.

Such asylums are provided "for the accommodation of pauper lunatics [see sec. 238 of the Lunacy Act, 1890], and the term lunatic, it will be recollected, includes an idiot *or* person of unsound mind" [see sec. 341 of the Lunacy Act, 1890]. It is not, however, required that *every* pauper lunatic be sent to an asylum, but only every such pauper lunatic (or idiot) as is deemed (by the certifying medical man and the Justices who make the order for admission) to be (in the language of the medical certificate given in Form No. 8 in the 2nd schedule to the Lunacy Act, 1890, and which is to

* The personal vanity will, it is hoped, be pardoned if one of the writers mentions that his native county of Devon was one of the counties which established an asylum under the powers of this Act, and before it became compulsory to do so, and that it did so in consequence of the urgent and persistent efforts of his own maternal grandfather—the late Rev. W. Palmer, D.D.

be read together with sec. 25 of the Act) "a proper person to be taken charge of, and detained under care and treatment."

Some observations have already been made as to the certificates which the medical man is required to fill up, and as to the way in which they ought to be filled up. Moreover, the civil liability of a medical man who signs a certificate under the Lunacy Act to the effect that a person is insane, is in strict law the same, and the legal rights of a pauper against the certifying medical man also the same, as in the case of a lunatic of independent means. Actions by paupers against medical men for improperly certifying them to be insane are, however, not of frequent occurrence, though instances of actions under the Lunacy Acts are to be found in *Tuck v. Barker* (reported *Knight's Official Advertiser* for November, 1863) and in *A. G. v. Pearson* (1846). In most cases, the damages recoverable would, almost certainly, be but small in amount.

The usual practice is for the order for the alleged lunatic to be taken to a County or Borough asylum to be handed, when made, to the relieving officer or overseer. He then usually takes the alleged lunatic into his charge, and conveys him or her to the proper asylum. The order of the Justice is a sufficient authority to him for doing this. On arrival at the asylum, the order and certificate are examined by one of the responsible medical men on duty there, and, if they are found to be in proper form, the lunatic is formally admitted as a patient [see Lunacy Act, 1890, sec. 27], and the admission entered on the Register of Patients which is required to be kept [see Lunacy Rules, r. 7, sub-r. 1; *Fry on Lunacy*, p. 376; for form see Appendix to Lunacy Rules, Form 1], and neglect to make this entry or making a false entry is a misdemeanour [Lunacy Act, 1891, secs. 316 and 318.]

Notice of the admission, with a copy of the Reception Order and the certificate, must be sent to the Commissioners in Lunacy within one clear day, and a medical statement as to the patient's mental and bodily health sent to them after the second (so as to afford time for observation of the case), but before the end of the seventh day from the admission [Lunacy

Rules, rr. 7, 31]. Should the Reception Order, or the certificate, be found incorrect or defective in any respect, it may, if the Commissioners approve, be amended, within fourteen days after the reception, by the person who signed it [see Lunacy Act, 1890, sec. 34]. A lunatic who escapes from the asylum may be retaken at any time within fourteen days, and then retained under the original order and certificates [Lunacy Act, 1890, sec. 85]. If, however, the lunatic manage to remain out of the asylum fourteen days or more, these certificates cannot be acted upon, but the whole procedure must be gone through over again. Any manager, officer, or servant through whose neglect or connivance the escape occurs, is liable to a penalty of £20 reducible to £2 [Lunacy Act, 1890, sec. 323]. The Rules in Lunacy require every escape and recapture to be reported to the Commissioners in Lunacy [*Fry on Lunacy*, p. 39].

The discharge of pauper lunatics from an asylum is not made by the Authority who sent him there, but by any two of the Committee of Visitors with the written advice of the medical officer or by any three of such Visitors [see Lunacy Act, 1890, sec. 77]. If they think fit, the Visitors may give the proper Relieving Officer or Clerk of the Local Authority notice of their intention to discharge a pauper patient, in which case the pauper must be forthwith removed by one of them under a penalty not exceeding £10 [see Lunacy Act, 1890, secs. 80 and 320]. Moreover, a pauper patient who is not cured, may, if the medical officer of the asylum certify in writing that the patient is a fit one for a workhouse, be discharged from the asylum and sent to, and detained in, a Workhouse [Lunacy Act, 1890, sec. 25]. Or, on an undertaking by them that he shall no longer be chargeable to the rates, and shall be prevented from injury to himself or others, a pauper lunatic may be delivered over to his relatives or friends [Lunacy Act, 1890, sec. 79]. Every "discharge" must be registered within three clear days, and notice thereof sent to the Commissioners [Lunacy Rules, 1890, r. 23].

Leave for temporary absence from an asylum on trial may be granted to a pauper lunatic, on the written advice of the

medical officer, by any two of its Visitors with (if they so please) an allowance to him (not exceeding the asylum charge) during his absence [Lunacy Act, 1890, sec. 55].

The death of a pauper lunatic must be registered within three days, and notice of it sent within forty-eight hours to (1) the Commissioners [Lunacy R., 24] ; (2) to the relations of deceased ; (3) to the Registrar of Deaths for the district ; (4) to the Relieving Officer or Clerk of the Peace of the county or borough to which deceased was chargeable (Lunacy R., 24, sub-rule 4) ; and (5) to the Coroner for the district (Lunacy R., 24). The institution must provide a decent funeral in such cases [see *R. v. Stewart* (1840)], but is entitled to be repaid by the Authority to whom the lunatic is chargeable [Lunacy Act, 1890, sec. 297, and sec. 270, subsec. 2]. Such burial may be either in the parish churchyard, or, with the consent of the Incumbent and Churchwardens, in the churchyard of any neighbouring Parish, or, by agreement made by the Visiting Committee with the consent of both the Local Authority and Secretary of State, in a neighbouring cemetery, or (without fees to the Incumbent of the Parish) in a cemetery (not exceeding two acres) provided for the asylum [*Fry on Lunacy*, p. 63 ; Lunacy Act, 1890, sec. 259].

§ 2. *Reception of Pauper Lunatics in Private Asylums or Registered Hospitals.*—A pauper lunatic who needs asylum treatment must, as a rule, be sent to a County or Borough Asylum. But if there be no such asylum, or if it be full, or if there be other “special circumstances,” he may be sent to a Licensed House or Registered Hospital (see Lunacy Act, 1890, sec. 27). But, in such a case, the Order must state the reason why the patient is sent to the Licensed House or Registered Hospital. The forms of such an order, and also of the “Statement” and medical certificate, without which no pauper patient can lawfully be admitted to a Licensed House or Registered Hospital, are provided [see Sched. II, Forms 8 and 12, to Lunacy Act, 1890]. Except it be obliged to do so under an existing contract, a Licensed House or Registered Hospital is, moreover, not by law *bound* to receive a pauper lunatic sent to it under such an order [see

Lunacy Act, 1890, sec. 27, subsec. 4 ; and *R. v. Hadfield Peverell* (1849)].

The formalities to be observed upon the admission of a pauper lunatic into a private asylum are substantially the same as those which we have already (see § 1 of this Section) stated are required on his admission into a County or Borough asylum. As in that case, the patient's name is entered in the "register of patients," and the particulars of his case, in the medical case book [Lunacy Rules, No. 11]. Indeed, the same books are required to be kept as already mentioned [Lunacy Rules, No. 1]. Notices must also be sent as in the case of admission into a County or Borough asylum.

The Guardians of the Union, and any medical man appointed by them, may from time to time visit the patient [Lunacy Act, 1890, sec. 201, subsec. 1]. Such patient may, too, be transferred to another asylum by order of the duly appointed Visitors of the asylum [Lunacy Act, 1890, sec. 65]. If the patient recover, notice of such recovery must be sent to the Guardians of his Parish, or to the Clerk of the Local Authority to which he is chargeable, and if the patient be not removed within seven days he is then to be forthwith discharged [Lunacy Act, 1890, sec. 83].

A pauper in a Private Asylum may be discharged by an order of the Board of Guardians of the Parish to which he belongs, on receipt of which the manager of the house is bound to discharge him at once, unless such manager certify in writing that the patient is dangerous ; in which case he can only be discharged by the written order of the duly appointed Visitors and Visiting Commissioners [Lunacy Act, 1890, sec. 74]. The patient may also, in all cases, be discharged by the duly appointed Visitors, or by the Lunacy Commissioners [Lunacy Act, 1890, secs. 75—78].

Every removal or discharge is to be notified both to the duly appointed Visitors, and to the Commissioners [Lunacy R., Nos. 22, 23].

If the patient dies, a statement of the cause of death, with the name of any person then present, must (as in other cases) be drawn up and signed by the medical attendant, and a certified copy of such statement sent, within twenty-four hours, to the Lunacy Commissioners ; to the relative named

in the Reception Order ; to the District Registrar of Deaths and to the Clerk to the Visitors, and also within two days to the Coroner [Lunacy Act, 1890, sec. 84]. The medical attendant must also record such death both in the " Register of Deaths " and in the " Case Book." Unless other arrangements be made for so doing, the Managers of the asylum must bury the pauper [*R. v. Stewart* (1840)], but the Union or Local Authority to whom the deceased was chargeable must pay the expenses of this.

§ 3. *Reception of Pauper Lunatics in Workhouses.*—We have summarised, at the commencement of the present section of this chapter, the duties of Relieving Officers and of Overseers as to bringing pauper lunatics before a Justice of the Peace. If, in any such case, a constable, relieving officer, or overseer is satisfied that it is necessary either for the lunatic's welfare, or for the public safety, that the lunatic should be placed under proper care and control, before it is possible to take proceedings, such officer may at once remove him to the Workhouse of the Union, where he may be detained for not more than three days, before the expiration of which time such officer must take such proceedings with regard to the alleged lunatic as are required by the Act [Lunacy Act, 1890, sec. 20]. Moreover, if when a pauper lunatic is brought before a Justice of the Peace, in the manner detailed in the preceding section (see *ante*, p. 118), it appears that such lunatic ought, either for his own welfare, or that of the public, to be at once placed under care and control, such Justice of the Peace may send him to a Workhouse *temporarily*, in which case he may remain in such Workhouse for fourteen days [Lunacy Act, 1890, sec. 21]. If the medical officer of the Workhouse certify [in Form 10 in Appendix 2 to the Lunacy Act, 1890] that the person is a lunatic, and is a fit person to remain in the Workhouse as a lunatic, and that the accommodation of the Workhouse is sufficient for his case, such Justice may then make an order for the lunatic's detention in such Workhouse beyond the fourteen days [Lunacy Act, 1890, sec. 24]. Or a pauper who has been originally sent to an Asylum, may be discharged from it and sent to a Workhouse, in the manner detailed in the pre-

ceding section of this chapter, on the Certificate of the medical officer or by arrangement between the Visitors of the Asylum and the Local Government Board, made with the consent of the Lunacy Commissioners.

A dangerous lunatic may not be kept in a Workhouse for more than fourteen days, and to keep him there longer is a misdemeanour [see sec. 45 of the Poor Law Amendment Act, 1834, being 4 and 5 Will. IV, c. 76].

The lunatic paupers in a Workhouse must be visited quarterly by the medical officer of it, who must send in a quarterly list of them in which it is stated whether they are proper persons to remain in the Workhouse, and whether its accommodation is sufficient for them [Lunacy Act, 1890, sec. 24 (1), sec. 202 (1), and Form 10 in Sched. II].

The Guardians, must also enter, at least once a quarter, details as to the dietary, accommodation, and treatment of the lunatics in a Workhouse, in a book which must be laid before the Commissioners in Lunacy at their next visit [Lunacy Act, 1890, sec. 54].

The Commissioners in Lunacy visit the pauper lunatics in a Workhouse whenever they see fit [Lunacy Act, 1890, sec. 203].

§ 4. *Reception by Friends of Pauper Lunatics assisted by Outdoor Relief.*—Where a lunatic has been brought before a magistrate in the manner previously described, it may be that the medical man who is called in will not certify that such lunatic is a proper person to be sent to an asylum. Where this happens, the magistrate, if satisfied that the lunatic will have proper care there, may commit him to the care of friends [see Lunacy Act, 1890, sec. 22].

Moreover, the fact that a person is a lunatic in no way prevents the guardians, if so minded, from granting him Parish relief, leaving such lunatic, or his friends, to make any arrangements they may see fit about his residence.

The General Poor Law Orders do not apply to cases in which relief is rendered necessary by reason of infirmity.

Pauper lunatics in receipt of outdoor relief must be visited quarterly by the medical officer of the Union, and included in both his quarterly and his annual return [Lunacy Rules,

Nos. 28, 29, and Schedule thereto, Forms 17 and 18] ; and they may also be visited by the Commissioners in Lunacy, who may on obtaining a medical certificate, and being themselves satisfied of the propriety of such a course, order the removal of any patient amongst their number to an asylum [Lunacy Act, 1890, sec. 23].

SECTION D.—*Criminal Lunatics.*

The Common Law as to criminal lunatics has already been stated in outline (*supra*, p. 97, *et seq.*). It has been mentioned that in 1800, in consequence of *Hadfield's* then recent attack on King George III, the Act 39 and 40 Geo. III, c. 94, was passed.

The Act just mentioned (39 and 40 Geo. III, c. 94) provides that where a person is acquitted of any *treason*, *murder*, or *felony*, whom the jury find to have been insane when the offence charged was committed, or where a person brought up either to plead, or to be discharged for want of prosecution, is proved to be insane, the Court may order his detention, until the Sovereign give orders for his safe custody, during its pleasure, in a fitting place and manner.

Under this Act, persons acquitted on the ground of insanity were usually detained in the gaols, &c. But, in 1807, a Select Committee of the House of Commons recommended the establishment of a central Asylum for the reception of such persons. In consequence of this report, separate accommodation for sixty criminal lunatics was, in 1816, created in connection with Bethlehem Hospital. And, in 1860, the erection of a new central Asylum for Criminal Lunatics at Broadmoor (near Wokingham, Berks) was commenced under an Act of the last-mentioned year [23 and 24 Vict., c. 64], and this was opened in 1863. Provisions as to its government, &c., are contained in the Statute of 1860 [23 and 24 Vict., c. 64] and in a later Statute passed in 1884 [47 and 48 Vict., c. 64].

The act of 1800 extended only to prisoners who have on their trial been found *not guilty* on the ground of insanity. But in 1816 (by 56 Geo. III, c. 117) offenders becoming

insane *after conviction* were directed to be removed to a lunatic asylum.

In 1808, the maintenance of criminal lunatics was made a charge on their property, or, failing their having property, on their Parish of Settlement or their County. Changes in the law were made in 1828, and again in 1840 in consequence of *Oxford's* shooting at the Queen in that year. In 1864 the case of *Townley*, who, after conviction for murder, was certified insane by two Justices, led to further changes in the law [27 and 28 Vict., c. 29]. The property of a criminal lunatic may now be applied to his maintenance by order of Justices, or of the Lord Chancellor, who also has power to direct its application for the benefit of his family or to carry on his business, &c. [47 and 48 Vict., c. 64, sec. 10]. The maintenance of a criminal lunatic who becomes chargeable to the Public is now charged upon the Union [see *ibid.*].

The discharge, permanently or on trial, of a criminal lunatic or his transfer to another asylum must be by order of the Secretary of State [see 47 and 48 Vict., c. 64].

SECTION E.—*Idiots.**

It will be recollected that it is expressly enacted that Idiots shall be included within the operation of the Lunacy Act, 1890 [see Lunacy Act, 1890, sec. 341].

Idiots, have, however, also been the subjects of special legislation in "The Idiots Act, 1886" (49 Vict., c. 25). It must be noted that lunatics are, however, not included in the term "idiot or imbecile" [*ibid.*, sec. 17].

The object of the "Idiots Act, 1886," was, in fact, to make provision for the care and custody of idiots in proper registered houses, without the necessity of any resort to the somewhat intricate machinery made necessary by the "Lunacy Acts."

Under this Act, an idiot or imbecile from birth, or from

* The authors are indebted to William Locke, Esq., Superintendent of the Western Counties Idiot Asylum, Starcross, Devon, one of the committee by whom the Idiots Act was prepared, for having most kindly revised this section of the present chapter.

an early age, may be placed in an institution, registered under the Act, upon a medical certificate, in the form provided in the schedule to such Act, being given, and upon a statement by the parents or persons *in loco parentis* being made in the form also provided by the schedule [Idiots Act, sec. 4]. An idiot placed in such an institution while under age may, with the consent of the Commissioners in Lunacy, be kept there after he is of full age, upon a medical certificate and statement being given in a form similar to that on which he was admitted (Idiots Act, 1886, sec. 5). The Commissioners, however, have power to order the discharge of any such person [sec. 6]. Provisions are also contained in the Act for the registration of "any hospital, institution, or licensed house . . . devoted exclusively to the care, education, and training of idiots or imbeciles" [Idiots Act, 1886, secs. 7, 8]. The Commissioners in Lunacy have power to require the residence, in a registered institution, of a duly qualified medical practitioner [*ibid.*, sec. 14], and in any case a medical journal must be kept in every such institution, in a form approved by the Commissioners [*ibid.*, sec. 13], and the institution is visited, and its inmates inspected by the Commissioners in Lunacy, at least once in every twelve months [*ibid.*, sec. 12]. Moreover, it is provided that "the provisions of any Act relating to the orders, certificates, or reports necessary to the reception, detention, or care and treatment of lunatics, and the books to be kept concerning them, shall not apply to any institution registered under the Idiots Act" [*ibid.*, sec. 11].

On the first reception of an idiot or imbecile into a Registered Institution for Idiots, the Superintendent must send a certificate thereof in writing to the Commissioners in Lunacy, in the form given by the schedule to the Act, and embodying certain particulars [*ibid.*, sec. 9]. On the death or discharge of an idiot or imbecile such superintendent must, too, "forthwith" notify the fact in writing to the Commissioners in Lunacy [*ibid.*, sec. 10].

CHAPTER IV

VIOLATIONS OF THE LUNACY LAWS

VIOLATIONS of the lunacy laws are for the most part criminal offences, and may be proceeded for and punished as such. The provisions of the Lunacy Acts are, however, somewhat complicated, and confusion as to what such Acts render criminally punishable sometimes exists, even in the minds of those who have studied them. A plain statement of the whole law in connection with this subject will, it is believed, be useful to many.

In the preceding chapters of the part of this work which relates to detention and treatment, we have considered the three several ways in which an insane person may be legally placed under restraint. These, it will be recollected, are (1) under the Common Law ; (2) under an Inquisition ; or (3) under an Order made in pursuance of, and according to, the provisions of one or other of the various modern statutes relating to lunatics.

It will be convenient to separately consider the requirements of the law which have to be fulfilled upon the reception of an insane patient taking place when such patient is received under either of these three respective authorities. Failure to observe the prescribed formalities will in each case amount to a violation of the law.

1. We will first consider the position of a person who undertakes the charge of one who is insane, in reliance upon the provisions of the Common Law, and without being authorised to do so by either an inquisition or a statutory order. Such a person can thus act in reliance upon the Common Law in cases where he does so " without profit " (in other words without any sort of direct pecuniary reward) and where

the patient who is received by him has not been the subject of certificates under the Lunacy Act. Under these circumstances, and so long as he really gets no direct pecuniary payment or profit out of the transaction, a person thus gratuitously receiving an uncertified insane patient need not comply with the requirements of the Lunacy Acts, unless and until the Commissioners in Lunacy expressly call upon him to do so. Where, however, a person is detained or treated as a lunatic in any private family, or charitable establishment (not being an institution for lunatics), without an order and certificates, the Commissioners in Lunacy have the right to require a report [Lunacy Act, 1890, sec. 206]. There further is power, in cases in which persons neglect or ill-treat their insane charges, to put in force the provisions of the Lunacy Act [see Lunacy Act, 1890, sec. 13]. The Commissioners in Lunacy, too, have power to order a special investigation and report, by a competent person, upon the mental and bodily condition of a lunatic who is either in an institution for lunatics or is detained by anyone as a single patient.

The moment a person who is acting under the provisions of the Common Law, and not under the authority of either an inquisition or the Lunacy Acts, either receives as a patient any person who has been certified under the Lunacy Acts as insane, or receives any patient (whether certified or not) who is in fact insane, "for profit" (or in other words to derive a direct pecuniary compensation in respect of what he does), he becomes subject to the prohibitions and penalties contained in the Lunacy Act, and this though such patient has not been certified under the Lunacy Acts as insane, and though the person receiving him honestly makes the mistake of believing that such patient is not insane. A great many people, who really know better, and are perfectly aware that the patients whom they receive are in truth insane, are from time to time discovered endeavouring to evade the provisions of the Lunacy Act by omitting either to obtain any license, or to get the patients whom they thus receive certified under the Lunacy Acts as insane, but nevertheless receiving them for profit. The pretence commonly set up, under such circumstances, is that the

persons who have been thus received are suffering from "hysteria" or from some other form of "nervous disorder." Where a person who thus behaves is not acting *bond fide*, and well knows that the excuse which he sets up is in truth nothing better than a pretence, he is, of course, very properly punished with some severity.

But, as has been already incidentally mentioned, even an honest belief that the patient or patients received were not insane is, according to the strict letter of the law, no defence at all to a prosecution under the Lunacy Acts [see *R. v. Bishop*, 1880]. In the language of lawyers, the things forbidden by the Lunacy Act are *mala prohibita*; and a person is guilty of an offence against the statute whether he have a *mens rea* or not. The same proposition, in ordinary English, is that the acts which are forbidden are *absolutely* prohibited by the law, whether the person committing them has a knowledge that the patient was insane or not, and that if he violates the law in this respect, even unintentionally, he is guilty of a criminal offence.*

* A case of *R. v. Sherrard* recently occurred (1894), in which it was suggested that, to be guilty of an offence against the Lunacy Acts, the person receiving an insane patient must not only have known that such patient was insane, but have received the patient for treatment as insane, and have actually treated him as insane. The case became the subject of a question in the House of Commons, reported as follows:

"Mr. Labouchere asked the Home Secretary whether he was aware that, in a case of "*the Commissioners in Lunacy v. Sherrard*," recently tried at the Central Criminal Court, Mr. Justice Grantham stated that, in order to get a conviction for keeping two lunatics in an unlicensed house, it must be proved that the two persons detained were not only of unsound mind, but that they were treated by the defendant as persons of unsound mind; and whether any change of the law was proposed to guard against the danger of the confinement of persons of unsound mind in unlicensed houses.

"The Home Secretary said he had been informed that Mr. Justice Grantham did direct the Jury as stated in the question, and in so doing he followed the rule of Mr. Justice Stephen, which was upheld in the Court of Crown Cases Reserved. He was not himself aware that the law was generally evaded, but if any case of abuse were brought before him he would consider whether any amendment of the law was desirable or practicable."—*The Evening Standard*, Monday, March 19th, 1894.

If, however, it be the fact (which is not altogether clear) that the learned judge who tried *R. v. Sherrard* gave the jury a direction which was in conflict with the case of *R. v. Bishop*, 1880, cited in the text, such direction, being but a

While those who, in bare reliance upon the Common Law, take charge *without profit* of persons who are insane, but have not been certified to be so, are free from liability to the Criminal Law, it must not be forgotten that such persons incur a serious risk of having a civil action brought against them by any patient whom they may have detained as insane. People who undertake the care of any insane person, without first obtaining the protection which is afforded to them by an inquisition, or by a statutory order, can only justify their action by the Common (or general) Law of the land, apart from statute. This, it will be recollected [see *ante*, chapter 1 of this Part, "Detention and Treatment under the Common Law apart from Statute"], does no more than authorise the restraint of those insane persons who are actually dangerous to themselves or to others.

2. The second mode of detention and treatment is under the powers conferred by an inquisition. It will be recollected that the Lunacy Act, 1890, expressly makes those of its provisions which apply to *the reception* of patients inapplicable to insane persons who have been so found by inquisition; and makes a request for the reception of the patient signed by a Master in Lunacy, or by the Committee of the patient's person, equivalent to a reception order [see "Lunacy Act," 1890, sec. 12].

3. The third mode in which the detention and treatment of an insane person may lawfully take place is in pursuance of a Reception or other Statutory Order.

The proper and legal mode of receiving under the Lunacy Act an insane patient who has been duly certified as insane is to see that proper papers are brought with such patient, namely a Reception Order, and the accompanying documents on which it is founded; to examine such papers and see that they are in order; to duly enter the reception of the patient in the proper books; and to forthwith report to the Commissioners in Lunacy the fact that such patient has been received, copies of the Reception Order and certificates being at the same time forwarded to them.

dictum of a single judge, cannot be relied upon, as against the decision in *R. v. Bishop*, 1880, which was that of five judges sitting as a Court for Crown Cases Reserved,

Illegal receptions in violation of the Lunacy Acts take place principally in three ways :

- (1) By receiving for profit any person who is in fact insane without any Reception Order and certificates as required by the Lunacy Acts. From the remarks which have already been made it will have been seen that receptions which take place apart altogether from the provisions of the Lunacy Acts, and in reliance either upon the Common Law, or more frequently upon what is done in some way escaping notice, afford the most common examples of this sort of illegal reception.
- (2) By receiving any person who has been certified under the Lunacy Acts as insane, even though he may be brought under a proper Reception Order and certificates, without forthwith making a report of such reception to the Commissioners in Lunacy. A person who has once been certified under the Lunacy Acts as insane can afterwards only be received by any person for reward in accordance with the provisions of the Lunacy Act [Lunacy Act, 1890, sec. 315]. Not only must the person so certified be taken in under a Reception Order [see Lunacy Act, 1890, sec. 4, subsec. 1, and sec. 35], but the person who receives him is guilty of a misdemeanour (the penalty for which is £50) if he omit to duly forward to the Commissioners in Lunacy, directly after the admission of the patient has taken place, a report of such admission in the form rendered necessary by the Lunacy Act [see Lunacy Act, 1890, sec. 316]. The policy of the Lunacy Acts is to render the Commissioners in Lunacy able to put their hands, at any moment, upon any person who is subject to the provisions of the Lunacy Act. For this purpose, it is of course necessary that reports as to where such person is should from time to time be received from those who have charge of the patient. A further object

is to prevent the gathering together of a number of insane people who, in the absence of any provisions in the Lunacy Act to prevent it, might be simply herded together without proper and efficient care and control.

- (3) By the reception of more than one insane person without a license. The Lunacy Acts allow a single patient to be received by anyone, even for reward, without a license, if a report of his reception, &c., be in due course forwarded to the Commissioners in Lunacy, and if the proper papers be from time to time sent to them [see Lunacy Act, 1890, sec. 316]. In general, a person who receives two or more people who are in fact insane, must obtain a license so to do. But the Commissioners in Lunacy have power to allow a person receiving a single patient to take another patient to reside in the same house in cases where they are satisfied that this is desirable, that the circumstances are special, and that it is for the interest of the original patient that another patient should reside in the same house [see Lunacy Act, 1890, sec. 46].*

Having now set out the principal provisions of the law relating to the reception of patients, a violation of any of which will render the person who so receives the patient liable to a prosecution, we may now consider, as a separate subject, the various ways in which breaches of the Lunacy Acts may be committed.

Broadly speaking, the violations of the Lunacy Acts which are criminally punishable may be divided into two large groups: viz. (a) illegal receptions of the insane, and (b) violations of the Lunacy Acts occurring after a reception which originally was lawful. It will be clearer if these two great classes of violations of the Lunacy Acts be considered separately.

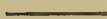
* For example, a dispensation of this sort would probably be granted in a case where an insane lady was resident with a medical man and it is probable that the companionship of another lady patient would be of benefit.

(a) Receptions of the insane are illegal, and violations of the law, unless they are made in accordance with the regulations which have already been considered.

(b) Violations of the Lunacy Acts occurring after a reception which originally was lawful, arise by a non-compliance with, or the commission of acts contrary to, some of the details prescribed by the Lunacy Acts. Unlike the provisions with regard merely to the *reception* of patients, the provisions of the Lunacy Acts for penalties, for failure to send returns, keep records, and as to ill-treatment of patients, apply equally to all classes of patients. Some of the principal offences against the Lunacy Acts are as follow : " Wilful misstatements in a petition," " statement of particulars," or a " reception order " are misdemeanours, prosecutions for which can, however, only take place by order of the Commissioners in Lunacy, the Attorney-General, or the Director of Public Prosecutions [see Lunacy Act, 1890, sec. 317]. Every person receiving an insane patient must forward a report of such event to the Commissioners in Lunacy, not only (as has been seen) on the admission of a patient, but also on the removal, discharge, or death of such patient ; an omission to send such report and the other documents and information which the Lunacy Acts require to be furnished is a misdemeanour punishable by a penalty of £10 for each of such omissions [see Lunacy Act, 1890, sec. 320]. A misdemeanour is also committed by him if the person who has received a lunatic patient neglects to forward to the Commissioners in Lunacy at the times and in manner prescribed by the Lunacy Acts any of the documents which are directed to be forwarded to them [Lunacy Act, 1890, sec. 320]. Misdemeanours are also committed by knowingly making false entries in the books, statements, or returns required by the Lunacy Act [Lunacy Act, 1890, sec. 318] ; by omissions to comply with other requirements of the Lunacy Act [Lunacy Act, 1890, sec. 320] ; by neglecting to forward to the addressees any letter addressed by a lunatic patient to the Lord Chancellor, to the Commissioners in Lunacy, or to a Visitor [Lunacy Act, 1890, sec. 41] ; by obstructing a Commissioner in Lunacy, a Visitor, or a person authorised by the Lord Chancellor or by a Secretary of

State [Lunacy Act, 1890, sec. 321] ; by ill-treatment of a patient [Lunacy Act, 1890, sec. 322] ; by conniving at the escape of, or secreting a patient [Lunacy Act, 1890, sec. 323] ; by the commission by any person having the care of her of immorality with a female patient [Lunacy Act, 1890, sec. 324] ; or by neglecting to give notice to the Coroner of the death of an insane patient [Lunacy Act, 1890, sec. 319] ; or to give the same notice to the Commissioners in Lunacy (sec. 316).

PART II



MAINTENANCE

PART II.—MAINTENANCE

CHAPTER I

THE MAINTENANCE OF THE INSANE

THIS work being intended to deal only with the *personal* treatment of the insane, it would be foreign to it to discuss in any detail rights or proceedings having relation purely and only to the rights of insane persons to property or *estates*. But the application of means available for that purpose to his maintenance and comfort is closely connected with the personal treatment of every insane person, and is of grave importance not only to the insane themselves but also to those about them. No further apology or explanation is therefore offered for including it in this work.

The English law now, in the result, provides that the resources possessed by each insane person, from the rich man, who forms the subject of an inquisition, down to one who is maintained by his parish as a pauper in a county asylum, shall be applicable to his wants. The case of a wealthy man who has been the subject of an inquisition has already been considered. Paupers, too, have already been the subjects of discussion (see *ante*, p. 118). Intermediate cases in which patients are neither sufficiently wealthy to become the subjects of inquisition, nor so poor as to fall within the rights of paupers will all, it is hoped, be included in this chapter.*

* Under the existing provisions (especially Lunacy Act, 1890, sec. 116) there is arising in the country a class of people whose estates are in the hands of receivers or other persons having the powers of a Committee of the Estate ;

There appear to be four classes of provisions made as to the maintenance of the insane.

In the first place, a general provision which in substance meets the majority of cases in which members of the middle class have become insane is, *on application*, possessed by the Chancery Division of the High Court, or, in cases where the total value of the lunatic's property is under £200, by the County Court Judge of the district. This power, as regards the High Court, is contained in sec. 116 of the Lunacy Act, 1890. This enactment makes those powers and provisions of the Act which relate to "management and administration" apply not only to (a) lunatics so found by inquisition, but also (b) to lunatics *not* so found who have been made the subjects of an administration order obtained before the passing of the Act of 1890; (c) to every person lawfully detained as a lunatic though not so found by inquisition; (d) to every person, not so detained and not found lunatic by inquisition, proved to the satisfaction of the Judge in Lunacy to be "through mental infirmity arising from disease or age incapable of managing his affairs;" (e) to every person similarly proved by either a Master's certificate, by a report of the Commissioners in Lunacy, or by "affidavit or otherwise" to be of unsound mind and incapable of managing his affairs, if it be also shown that the value of his property does not exceed £2000, or its *income* £100 per annum; (f) to every person similarly proved to be or to have been a criminal lunatic who is still insane and in confinement [sec. 116, subsec. 1]. It is directed that in all the above cases the necessary powers under the Act shall, where the person has not been found lunatic by inquisition, be exercised by a person directed by the judge [*ibid.*, subsec. 2]. Such person is subject to the control of the Court in the same manner as the Committee of the estate of a lunatic so found by inquisition [*ibid.*, subsec. 3], and he may, subject to the discretion of the Judge in Lunacy, exercise the powers vested

while the former have not the protection which an Inquisition affords, for the patient is not visited by the Visitors. Probably the existing provisions will have to be amended or repealed, inasmuch as what is really wanted is a cheaper and simpler method of Inquisition and Appointment of Committees than the law at present affords.

in him "for the maintenance and benefit of the lunatic, or of him and his family" [*ibid.*, subsec. 4]. The next following section of the Act gives power for the application of a lunatic's property in, amongst other things, "payment of any debt or incumbrance incurred for the lunatic's maintenance, or otherwise for his benefit ; payment of, or provision for, the expenses of his future maintenance."

In cases in which it is alleged that the property of a lunatic does not exceed £2000 in value, or its income £100 a year (and the existence of either alternative creates a jurisdiction), the *net* amount, and not the gross amount, is the criterion [see *re Faircloth* (1879) ; *re Sandford* (1849) ; *re Adams* (1864)].

The jurisdiction conferred by the above sections of the Lunacy Act, 1890, will only be put into force in uncontested cases, and not where the alleged lunatic appears and denies that he is of unsound mind [see *re Lees* (1884)].

In the cases to which they are applicable, the provisions of the Lunacy Act, 1890, which have just been set out may be put in force in a summary way. The procedure to do this shortly is that a summons is taken out in chambers before one of the Masters in Lunacy, that seven clear days' notice of the hearing of the intended application is given to the alleged lunatic by serving him with a copy endorsed with a notice signed by the applicant or his solicitor, and that if the matter be not disputed, the Master will at the hearing, and on proper evidence of service and as to the facts (an affidavit of one medical man is usually enough), certify the result to the Judge in Lunacy, who then has power to put the provisions of the Lunacy Act relating to the management and administration of the lunatic's property into force for the benefit of him and his family [as to the practice see Lunacy Rules, 1892, rr. 48—55 ; and see also *Pope on Lunacy*, 2nd edit., p. 226, *et seq.*].

Moreover, a county court judge, from a place in whose district a lunatic possessing property, the total value of which is under £200, has been sent under a reception order, may, if there be no relative or friend of the lunatic willing to undertake the management of such property, on the application of the clerk of the guardians, or a

relieving officer of the union, authorise the applicant "or such other person as the judge by his order appoints to take possession of, sell, and realise such property, and to exercise all such powers as, if the lunatic were dead, would be possessed by his legal personal representative" [Lunacy Act, 1890, sec. 132, subsec. 1]. Under such an order the lunatic's property may be applied in repaying expenditure incurred for the lunatic's past benefit or previously made by the guardians on his account [*ibid.*, subsec. 2]. The person acting under the order must render accounts as directed [*ibid.*, subsec. 3].

There is also power possessed by the Judge in Lunacy to give directions as to the application of income or ready money where there is reason to believe that the unsoundness of mind of a lunatic so found by inquisition will be *temporary* only. In any such case temporary provision for the maintenance of the lunatic, and of those of his family who are immediately dependent upon him, may be made by ordering the whole or a portion of funds of the nature just indicated to be paid to and applied by a person named in the order, instead of a Committee of the whole estate being appointed [Lunacy Act, 1890, sec. 127, subsec. 1]. The person thus appointed can give a good receipt for money, and must act on and obey the order [*ibid.*, subsec. 2]. Such person must pass an account before the Masters if so required [*ibid.*, subsec. 3].

In the second place, in addition to the powers which may thus be exercised by the Chancery Division of the High Court or by a County Court Judge *upon application*, provision is made for very small cases in which no private person cares to incur the trouble and expense incident to making the necessary application. In view of such cases it is provided by sec. 100 of the Lunacy Act, 1890, that where *the Commissioners in Lunacy* report that the property of any person alleged to be a lunatic or taken charge of as such, but not so found by inquisition, is not duly protected, or that the income of such property is not duly applied for his benefit, the filing of such a report shall be taken to be equivalent at an ordinary petition for an inquisition supported by proper evidence [see Lunacy Act, 1890, sec. 100].

The effect of the filing of a report by the Commissioners in Lunacy under this enactment is that an inquisition follows which is held in the ordinary way, but at a greatly reduced expense, the demand of a jury in such cases being practically unknown, and the inquiry, in the absence of this, taking place before a Master in Lunacy.

A third class of cases arises where an insane person is interested in funds which are, as lawyers technically term it, "in Court," or, as the Public usually express it, "in Chancery." In this case the Chancery Division of the High Court has jurisdiction (which it has exercised since 1760) as to the application of the funds. Where this latter jurisdiction exists, not only will income be dealt with under it, but capital will, if necessary, also be resorted to [see *Johnson v. Turner* (1868); *Pope on Lunacy*, 2nd edit., p. 240]. Moreover, payments for past [see *re Upfill's Trusts* (1851)], as well as for future, maintenance will be ordered. Where, too, this jurisdiction is exercised, payments will be directed to be made to a wife for the benefit of her insane husband, to a child for the benefit of an insane parent, to a brother for the benefit of his insane sister, or to a niece for the benefit of insane uncles or aunts, and *vice versâ*; indeed, they may even be ordered to be made to a mere friend [see cases collected in *Pope on Lunacy*, 2nd edit., at p. 237].

Yet a fourth class of cases, in which there is power to deal with the property of a lunatic not so found by inquisition, arises where stock is standing in the name of, or is vested in, a lunatic resident out of the jurisdiction who has been declared lunatic by a competent local court and whose property has been thereby vested in some person who is appointed for that purpose. In such cases the Judge in Lunacy may on proof of the above facts order some competent person to make a transfer of such stock or of any part thereof to the person who has been so appointed by the local court, as mentioned above, or to some other person, and to pay the dividends on it as such judge may think fit [see Lunacy Act, 1890, sec. 134]. The Masters in Lunacy have power (which they will exercise on a summons for that purpose being taken out) to make inquiries, without any

order of reference, as to whether the state of facts above indicated exists or not [Lunacy Rules, 1890, r. 33]. Where, however, an application founded on the alleged existence of the above state of facts has been made without a previous inquiry being held by the Masters to ascertain them, such an inquiry will apparently be directed [see *Pope on Lunacy*, 2nd edit., p. 231 ; *re Elias* (1851) ; *re Barlow's will* (1887)].

PART III



RESPONSIBILITIES

PART III.—RESPONSIBILITIES

PRELIMINARY REMARKS

THE care and treatment of the persons of the insane in its various forms have now been considered; so have breaches of the law which may arise by the reception of such persons without compliance with the formalities which have been framed for their protection; and the manner in which any property which such persons may possess can be made available for their maintenance during their affliction has been pointed out.

The responsibilities of the insane, their competency as witnesses in a court of law, and their testamentary capacity remain to be discussed.

The responsibilities of the insane may be considered as they are either (A) Civil or (B) Criminal.

Accordingly Part III of our subject will deal with such responsibilities from these two several points of view.

By far the more important chapter on the subject of responsibilities will be that dealing with the criminal responsibility of the insane. This is a subject of very great importance, which probably presents itself for consideration in a court of law more frequently than any other matter connected with insanity (except possibly questions of testamentary capacity), while the difference apparently existing between law and medicine with regard to it renders it one deserving of much attention.

CHAPTER I

THE CIVIL LIABILITY OF THE INSANE

THE first matter necessary in considering the civil liability of the insane is that we should correctly appreciate the difference between civil and criminal liability. The latter, generally speaking, exists whenever there is a violation of any right belonging to the public at large. Civil liability, on the other hand, arises when the rights of an individual as such are infringed. Civil liability may arise either from a breach of a contract between the parties or of one of its incidents, or from the invasion of one of the rights which all individuals possess as such. In the jargon of lawyers, the liability is in the former case said to be "*ex contractu*" and in the latter "*ex delicto*;" and it is also said that all civil liability arises either "*ex contractu*" or "*ex delicto*."

A liability *ex delicto* is said to arise from what lawyers call "a tort." The word "tort" is derived through the French from the Latin (*tortus* = *damnum, injustitia, vis, violentia, alicui illata*, Ducange Gloss., *ad verb.*), and Lord Coke tells us accordingly that "Tort crooked or wrong signifieth injury" (2 *Inst.*, 56).

The liability of an insane person which arises from contracts into which he has entered is governed by different rules from those which regulate the liability of such a person for wrongs, or injuries inflicted by him upon any of the rights which others possess without, and apart from, an express contract. For this reason, as well as for others, it will be convenient to discuss separately: (1) The liability of the insane upon contracts, and (2) The liability of the insane for wrongs to other parties.

SECTION I. *The Liability of the Insane upon Contracts.*

If a person of sound mind make a contract, and afterwards become insane, his supervening insanity, as a rule, does not excuse him from the performance of the contract which he has made [see *Leake on Contracts*, p. 503]. It, however, relieves him from liability to carry out a contract to marry [as to which see *Cannon v. Smalley* (1885)]; and it perhaps also excuses him from the performance of contracts to render personal services. But as a rule the supervening insanity, as we have said, has not the effect of putting an end to a contract. Even if an agent, whose authority is apparently continuing, after his principal has become insane, enters into a contract in good faith with a person who is ignorant of the fact of the insanity, the insane person will be bound [see *Drew v. Nunn* (1879)]. Accordingly the implied authority to pledge her husband's credit for "necessaries" which a wife generally possesses, continues after the former has become insane [*Read v. Legard* (1851)].

An insane person, moreover, can during his insanity, like an infant, make a binding contract for what the law calls "necessaries," and this whether the insanity be known to the other party to the contract or not [see *Leake on Contracts*, 3rd edit., 505; and the long series of cases from *Baxter v. Earl of Portsmouth* in the year 1826, down to *re Rhodes* in 1890].

The term "necessaries" would appear to be—as in the analogous case of infants—a question entirely of degree. A thing which may be quite proper and a necessary for a young or insane person in one position of life would be quite unsuited for the same person if in a different situation in society. Accordingly, on the one hand a uniform, a liveried servant, horses, watches, and even jewellery may, under certain circumstances, be "necessaries;" on the other hand, and under other circumstances, similar articles to the above, cigars and tobacco and jewellery, &c., for presentation, may not fall within this description [see *Leake on Contracts*, p. 743]. In the case of an insane person, the maintenance

of a wife, and costs properly incurred in defending an inquisition, *e. g.* the expense of a medical witness [*Brockwell v. Bullock* (1889)], are certainly "necessaries" [see *Leake on Contracts*, 3rd edit., p. 505]. But articles with which the insane person is, in fact, already supplied, are not "necessaries" [see *McLean v. Leeming* (1850)].

Whether any given article is, or is not, under the circumstances a "necessary" must, if there is *any* evidence about it, be decided by a jury; but it is a legal question for the court to decide, whether or not there *is* any evidence that the article, in point of law, falls within this description [*Ryder v. Wombwell* (1868)].

As a general rule, however, a person who is in a state of such insanity as disables him from making it, is not bound by any contract into which he may enter, while in that condition, with another *who is aware that he is thus insane* [see *Molton v. Camroux* (1848); *Imperial Loan Company v. Stone* (1892)]. It must be remembered that *contracts* and *actual conveyances* are, however, not identical, and whether this rule applies to conveyances or not will be considered presently.

Confining our attention for the moment to *contracts*, it will be noted that the mere fact of the existence of insanity, on his part, does not render a man's contract either void or liable to be made void, as against one who, at the time of the making of the contract, was not aware of the other's condition [see *Niell v. Morley* (1804); *Bernasconi v. Argyle* (1827); *Leake on Contracts*, 3rd edit., 504]. Indeed, the old rule of law, which prevailed down to Lord Coke's time, was that a man could not, under any circumstances, set up his own insanity—a principle which was expressed by saying "the partie shall not disable himselfe" [see *Beverley's case* (1603)]. An exception has been engrafted upon this rule, to the effect that the contracts of a person who is *non compos mentis* may, at such person's own instance, be declared to be void, whenever it can be shown not only that it was made during the existence of such a condition of insanity as takes away the power to contract, but that the existence of this condition was *known* to the plaintiff. The condition of insanity which will take away the power to

contract must (in accordance with the principles pointed out in the introductory chapter to this work) be one which renders its subject, with regard to the particular transaction, so insane as to be incompetent to dispose of his property—in other words, one which so overwhelms the mind that it is, in truth, the dominant power under which the person acts [see *Jenkins v. Morris* (1880)].

If, moreover, a reasonable contract be made in a business-like way, the mere existence of insanity does not make such contract bad, but to do this it must be shown that the contract was one which the insane person would not have made unless he had been insane. For instance, where a man made a lease of a farm which he fancied was impregnated with sulphur, but got for it the rent which it was really worth, and otherwise behaved in a rational way, it was decided that the lease was good [*Jenkins v. Morris* (1880)]. Not only, too, must such a condition as that above described exist, but to render a contract invalid it must be shown that the existence of this condition was actually *known* to the other party to the contract. If they can show this, an insane person or his representatives may get rid of a contract made under such circumstances. It is, in some cases, not altogether easy to see how it can be proved that the other party to the contract possessed a knowledge which renders the bargain invalid, or even how a presumption that he did so may be raised. For this purpose specific evidence of irrational conduct by the alleged insane person in transactions not within the knowledge of the other party, before or after the making of the contract, will not be admissible. General evidence, that it was notorious in the neighbourhood that such person was insane, is even less admissible [*Greenslade v. Dare* (1855)]. On the other hand, evidence that the conduct of such alleged insane person was, before the transaction, such as would make itself apparent to *anyone* dealing with him that he was insane, is certainly admissible [see *Beavan v. McDonell* (1854)]. Indeed, when it is shown that a person was insane at the time when any particular contract was made, the mere fact that the other party to that contract was in direct personal communication with him may be *some* (though slight) evi-

dence that such other person must have known of the insanity [*Lovatt v. Tribe* (1862)].

A man who is drunk at the time when a contract is entered into, and who is known by the other party to the contract to be in that condition, has the same rights as an insane person. So also has a man who makes a contract while he is, to the knowledge of the other party to it, in a condition of *delirium tremens* [see *Lovatt v. Tribe*; *Leake on Contracts*, 3rd edit., p. 505].

The rights of a person who enters into a contract while he is so insane or so intoxicated as to be unfit to make it, or while he is in a state of *delirium tremens* producing a similar effect upon him, must be pointed out. A contract made under such circumstances is not actually void, but the insane or otherwise incompetent party to the contract possesses the option of saying whether it shall stand good or not. If he says that he wishes that it should be binding, it will be so, and the law will not permit the other party to the contract to say, "You were mad or drunk (as the case may be) when you made the contract, and therefore it is not binding upon me." The technical reason for this is said to be that "the law will not permit anyone to take advantage of his own wrong." In other words, if a party to a contract knew, at the time when it was made, that the other party to it was, for any of the reasons which have been suggested, then incapable of entering into it, justice will not allow the party who knew this to say that such contract is void and cannot be enforced, for he must not "blow hot and blow cold" at the same time; and by treating the insane or drunken man as being competent to contract, he has elected to so regard him, and must, in fairness, be held bound by his own choice.

At one time the courts of equity used to refuse to enforce an *executory* contract (that is, a contract to do something in the future) which had been made by a person rendered incompetent by insanity or drunkenness, even if the incompetency was, at the time when the contract was made, unknown to the other party to it, and the bargain itself was perfectly fair in all its terms. Under the Judicature Act [36 and 37 Vict., c. 66, s. 25, subsec. 11], where

the rules of law and equity conflict, the rules of equity are directed to prevail. Nevertheless it is thought that the principles laid down above are those which would now be acted upon generally, even where they are not entirely those formerly prevalent in courts of equity.

The representatives of a deceased person (whatever the law formerly may have been) stand, so far as regards *contracts*, in the same position as the deceased. On the one hand, if he could not, while living, have succeeded in getting the contract declared void, his representatives cannot do so either. On the other hand, if he, while alive, could have got rid of it, his representatives possess the same power. Mere proof that a deceased man was insane is not enough to upset a contract, but his representatives must go further, and show both that the insanity of the deceased was such as to render him incapable of entering into the contract, and also that the other party *knew* of it [*Molton v. Camroux* (1848)].

With respect to *conveyances* (as distinct from mere contracts) made by a deceased person, the position of his representatives is not, at present, entirely clear. At common law, the heir, or heir-in-tail where the estate was entailed, was allowed to treat a *conveyance* as void in some cases where his insane ancestor could not himself have done so; it being held that the bare execution of an instrument under seal did not make it the deed of a party who executed it if, at the time when he did so, such party was incapable of understanding its effect [see *Shelford on Lunatics*, 2nd edit., p. 338; *Howard v. Digby* (1834); *Broom's Common Law*, 8th edit., p. 671]. Even now it is by no means perfectly clear that this old doctrine of the common law is not still in force; but it is necessary before a deed can be upset to show that the other party to it *knew* of the insanity of the ancestor whose heir seeks to have it declared void. Common sense, and the symmetry of the law, would say that this proof (which the leading case of *Molton v. Camroux* has rendered it necessary to give as to ordinary contracts) ought also to be required where a person's heir seeks to upset his ancestor's deed.

Some cases in which a particular status is either created

by a valid contract, or is destroyed by a breach of such contract, must now be considered.

The status created by the contract of marriage may be mentioned first.

A valid marriage cannot be contracted by a person who is so insane as not to understand the nature of the act. An adequate degree of sanity is required for contracting a valid marriage, just as it is necessary to enable a person to make a valid will or to do other legal acts. The burden of showing that, at the time when the ceremony of marriage was gone through, one of the parties to such ceremony was so insane as not to be capable of understanding the nature of the contract, and the duties and responsibilities which it creates, rests upon any person who impeaches the marriage on the ground that insanity existed at the time when the ceremony was gone through [see *Durham v. Durham* (1885), and cases there cited]. But, where the existence of this degree of insanity is proved, the Divorce Court will, on a proper application being made to it for that purpose, declare the marriage null and void [*Scott v. Sebright* (1886)]. The English law as to the capacity of an insane person to contract a marriage furnishes a good example of the remarks made in the introductory chapter to this work to the effect that it is not every act of an insane person that is void, but only the act of every person who is so insane as not to be capable of understanding and appreciating that particular act.

When a valid marriage has once been contracted, if one of the parties to it afterwards become insane, this affords the other party no ground for obtaining a divorce.

A breach of a binding marriage contract, committed by one of the parties to the marriage being guilty of adultery when the offender is insane, but capable of appreciating the nature of the act and its probable consequences, is sufficient ground for a divorce, and such insanity affords no excuse, or defence [see *Yarrow v. Yarrow* (1892)]. It is, indeed, not clear that the same degree of insanity as would entitle the accused to be acquitted on an indictment for a crime, constitutes a defence to a suit for a divorce on the ground of adultery. Neither, again, is it entirely clear whether, in a suit asking for a divorce on a ground such as cruelty, it

would afford an excuse, or defence, to prove that the acts complained of were committed by the respondent while in a state of permanent insanity [see *Hanbury v. Hanbury* (1892)].

Adultery committed by an insane person with one of the parties to a marriage is a wrong to the other party to the marriage, and its consequences will accordingly be considered in the next section of this chapter.

Finally, the status created by a contract of partnership must be considered.

As this status can only be created by a binding contract, it would seem, on principle, that a partnership entered into by a person with one whom he knew at the time to be insane, might either be held valid, or set aside, at the option of the insane person. No such case is known to have yet come before the courts. But it is not difficult to imagine one—as, for instance, if a designing person should contrive to get a man in business, whom he knew to be insane but possessed of a lucrative and valuable connection, to enter into a partnership by which the schemer would benefit.

If, after a valid partnership has once been created, one of the partners becomes insane, this fact does not, merely and of itself, put an end to the partnership. Such insanity will, however, be a sufficient ground for applying to a Court of Equity to dissolve the partnership. If, before any such application has been made, the insane partner recovers, he then becomes entitled to all the rights in the partnership which he originally possessed [see *Pope on Lunacy*, 2nd edit., p. 279].

SECTION II. *Liability of Insane Persons for Wrongs to other Parties apart from Contract.*

Direct authority upon the subject indicated above is extremely rare in English law, and any statements upon the matter which appear in its text-books are usually based upon first principles as to the general nature of “torts” (or wrongs to third persons independently of any contract), rather than upon any actual decisions. One of the broadest

of these first principles is, that every man is generally entitled to possess inviolate his personal security, liberty, and reputation ; and also to have his property protected. If his rights in these or similar respects be invaded, he is entitled to receive an indemnity from the invader, and this whether at the time of the violation of the right in question, a design or intention to injure did or did not exist in the mind of the latter. The law, in other words, looks to the damage done to the injured person, and not to the mind of his injurer ; for it is impossible to “try the thought of man,” or to find out what intention was existing in the mind of an aggressor at any given moment ; and therefore the law holds that every man is, by law, taken to intend the natural and reasonable consequences which follow from any act of his, altogether irrespectively of the actual state of his mind at the moment when he commits it. The doctrine of law, which thus looks at the nature of the act itself, instead of at the intention of the man who did it, is in some cases plain and direct, as exemplified by the rule of law that every one is directly responsible for any *trespass* to the person or property of another. In other cases, however, it is less direct and not so avowedly put forward, being hidden under what is called in English law the “doctrine of implied malice.” An illustration of what this “implied malice” is, is as follows : Plainly stated, it is the right of every man to enjoy his character without having it wantonly, and without excuse, attacked by anyone else. But English lawyers will not, and do not, say this plainly. They cover it up, and obscure it, by saying that no one must attack another’s character “maliciously,” and then going on to say that, from the mere attack, the malice will be “implied.” This, in truth, is no more than saying that no one may attack another’s character without excuse, and that, if he does attack it, he must show the attack to have been in some way excused or justified.

A further example of the principle that we must look to the nature of an act itself, instead of to the intentions with which it was done by its perpetrator, is this :—A man attacks another with a deadly weapon, and kills him. The law *implies* malice from the use of the deadly weapon, and will

not listen to proof that the man who used it did not really intend to kill, or was so drunk at the time as to be incapable of forming any intent whatever.

From this general principle it follows that an insane person is, in general, responsible for any wrong or injury to the person, character, or property of another, which may be committed by him. Accordingly Bacon, in his famous *Abridgment* (Trespass G.), laid down the law as follows, many years ago:—"An action for trespass may be brought against a lunatic, notwithstanding he is incapable of design; for whenever one person receives an injury from the voluntary act of another, this is a trespass though there was no desire to injure."

Old cases in English law [*e. g.* *Weaver v. Ward* (1646)] bear out what Bacon says. So also do modern ones [*e. g.* *Borrodaile v. Hunter* (1843)], which have established that an insane person is responsible for all trespasses to the person of another (called "assaults"), and other violations of a third party's rights; false representation, negligence [*Cross v. Andrews* (1597—98)], or interfering with his right to present another to a benefice in the Church—a violation of right, an action for which is technically called *quare impedit* [*Tyrell v. Jenner* (1829)].

A modern American case, the circumstances of which were singular, also illustrates what Bacon says. In the case referred to [*Vanderburgh v. Truax* (1847)], a man, having had a quarrel in the street with a boy, followed him into his master's store, into which the boy ran for refuge. While the man was running round the store after him, the boy, in trying to keep out of the way, ran against the "faucet" (or "spile") of a cask of wine, and knocked it out. In consequence a quantity of wine ran out, and was wasted. The man was held to be answerable to the owner of the store (the boy's master) for this; it being given as the ground for so deciding, that, at the time when the accident happened, he was doing an illegal and mischievous act, which was *likely* to prove injurious to others, and must accordingly be held responsible for the direct and natural consequences which resulted from what he did, whether he actually intended them or not. No doubt the

defendant in this instance was perfectly sane, but the case furnishes a good and striking example of the principle that *every* man is liable for what naturally follows from what he does, whether he meant it to be the result or not.

This principle extends to other injuries than merely physical ones. Some years ago, in a celebrated case [*Mordaunt v. Mordaunt* (1870)], a popular Serjeant, who has since died, laid down the general principle about insane persons very much as it is stated above, and was going on to give instances in which it applied, when the late Chief Baron Kelly (who was a great lawyer) agreed to the principle, and added that an insane person is also answerable for a libel, although his lordship did not mention any express authority for saying this, and it is just possible that he had in his mind the case of a person who defames another, and becomes insane *subsequently* to doing so.

In England it therefore seems that at any rate *some* damages are to be obtained from an insane person who defames another, either by writing ill things of him, or by saying something for which the law permits an action to be successfully brought (that is, saying that a person has done an act for which he might be indicted, or that he is suffering from a disease calculated to exclude him from society, or that he is blameworthy in his profession or trade, or something which actually does him mischief). The question is as to the *amount* of damages which are recoverable in such a case, and, so far as can be collected, the sum which a jury will make an insane person pay for defaming another is left by the law entirely and absolutely to their discretion.

There is much to be said for leaving what sum they will give as damages in each particular case to the good sense of the jury. A defendant may be so obviously mad that a jury may think that no one would pay the least attention to anything that he said; while, on the other hand, he may, though mad, be so cunning that he is able to do a great deal of mischief. In America the jury are controlled by an express rule of law as to the damages they may give, for it is held in that country [see *Krom v. Schoonmaker* (1848)] that, in all cases in which the amount of the damages may vary with the motive or animus with which a wrongful act

was done, if the man who did the act is insane, the damages must be limited to the actual damage sustained by the party injured. It has been hinted [see note to *Borrodaile v. Hunter* (1843)] that there may be, or ought to be, a doctrine of English law similar to that which exists in America. But, so far as is known, no case has decided that in England there is any such principle.

A good deal may probably be said in favour of the American doctrine which has just been stated. But, in two American decisions [*Dickenson v. Barber* (1812) affirmed and followed in *Yates v. Read* (1838)], an extension of this doctrine was attempted. It was sought in those cases to establish that, where the defamer is suffering from insanity so great and notorious that his words could not possibly have had any effect upon the mind of anyone, there is no legal injury at all, and that the insanity consequently affords an actual excuse, just as, if it be more or less slight, the jury may adjust the damages according to the view they take of the amount of mischief which, having regard to the mental condition of the defamer, was likely to result from the defamation; which latter principle would be expressed in technical language by saying that the jury may accept the fact of insanity in mitigation of damages.

It is probably on these cases that Mr. Oliver Wendell Holmes relies, when he says [*Lectures on Common Law*, at p. 109] that: "If insanity of a pronounced type exists, manifestly incapacitating the sufferer from complying with the rule which he has broken, good sense would require it to be admitted as an excuse." But the doctrine that insanity can ever afford an actual defence for defamation has never been recognised in England, at any rate; neither can it be accepted consistently with that doctrine of English law which passes by the name of the "doctrine of implied malice"; of which it has been sought, at the commencement of these remarks, to give some explanation.

In conclusion of our remarks as to wrongs apart from contracts, we may notice a point which, so far as is known, has never yet arisen for decision, namely,—If an insane person has committed adultery with a married person, while so insane as not to understand and appreciate the nature of the

act, would his insanity constitute a defence to him if sued for damages as a co-respondent in a divorce suit? It is conceived that, on principle, it could not; for committing adultery with a married person is a wrong towards the other party to the marriage, and insanity is, as we have seen, in English law, no excuse for a civil wrong.

CHAPTER II

THE CRIMINAL RESPONSIBILITY OF THE INSANE

THE object which penal legislation ought ever to propose to itself, in framing its rules as to the punishment of offences, is not only to provide a retribution to be exacted from offenders, but also to hold out a deterrent to those whose natural self-control might otherwise be insufficient to enable them to resist temptation or natural inclination to wrongdoing. The punishment which will not attain the latter, as well as the former effect, violates fundamental principles; consequently it is obvious that in any case in which it can be shown that the mind of the offender is incapable of appreciating both the above effects of punishment, the law ought not to visit its displeasure on him.

In accordance with these principles, it has ever been the rule, alike in England and in all other civilised communities, both never to punish those whose minds can be shown to be in a condition such as that just indicated, and to make provision, by other means, for that security of its more fortunate subjects, which the law certainly owes to them. Accordingly, it becomes necessary to consider what state of mind will, and what will not, afford immunity from the penalties of the law.

In point of fact, and in practice, the defence of insanity is more frequently set up in cases where the offence involves a punishment more serious than any consequences which will result if insanity on the part of the accused be established, than in cases where, the offence being a less important one, the accused may reasonably prefer taking the consequences of his act, rather than have it proved that he is insane, even though he has a legal defence on that ground.

The most numerous cases in which prisoners are acquitted on the ground of insanity appear, from the statistics which are published as to Broadmoor Asylum, to be, as might have been expected, those in which they are charged with murder. Other cases in which they are acquitted on this ground appear to follow in somewhat the following sequence: next after murders, attempts to murder; then arson (where the offenders, it may be noted, in the great preponderance of cases are men); next burglary and housebreaking; then unnatural offences; followed by a small number of assaults, and a still smaller number of attempts at suicide.

It must not, however, be supposed that the principles which govern the matter are, in strictness, any other as regards small offences than they are in the case of more serious ones. Both classes of offence are treated on the same principles, so soon as the act they involve appears to be one that falls within the cognizance of criminal law.

Instructions for setting up a defence of insanity usually proceed from his friends, rather than directly from an accused himself. Care should be always taken that the proper witnesses to prove any *facts* which are relied upon as indicative of insanity,—as, for example, that certain persons, who were near blood-relations of the accused, were in fact insane, and that the accused himself had been guilty of strange and eccentric conduct before committing the act with which he stands charged,—are forthcoming to give their evidence at the trial. Medical and other expert witnesses, who are going to give evidence of opinions which they have formed on the supposition that a given state of facts will be shown, will always do well to see for themselves that the facts on which they base their hypothesis can be strictly proved. Few things expose a scientific man to greater ridicule than to go into the witness-box and put forward a theory which turns out to have been founded by him upon the basis of hastily-assumed facts, which either do not exist or at least cannot be proved, and of the existence of which the witness has omitted to be well assured before forming or propounding his theory.

Moreover, arrangements should always be made for medical or other scientific witnesses, who are to give evidence

in support of the view that an accused prisoner is insane, to have one or more personal interviews with him before the trial takes place. Scientific witnesses to prove insanity are usually consulted after the accused has been before the magistrates, and has been sent by them for trial. For magistrates have no power, in any case, to go into any question of sanity or insanity, nor to refuse to send any accused person for trial, because they think that he was insane at the time when the act which is charged against him as a crime was committed.

A Grand Jury, moreover, *must* find a true Bill against an insane person, if they think that the act charged was in fact committed by him, and the fact that the accused was in their opinion insane at the time—be it never so plain—is no ground whatever for their throwing out the Bill [*R. v. Hodges* (1838)].

A Court of Assize, however, on a case coming before it, if any doubt on the point be suggested, is bound to inquire as to the state of mind of an accused. The question, as to whether such person is sane or insane, may arise at two stages of the trial. The first stage, in which this question may arise, is when the accused is called upon to plead. For it may then be inquired whether the accused is *at the time of the trial* mentally fit to plead. Such question, if raised, may take any one of three forms. First, if a prisoner, who is called upon to plead, then remains silent (or “stands mute” as lawyers call it), a jury may be asked whether such prisoner “is mute of malice, or by the visitation of God.” This is the proper question to put to them if, as often happens, a prisoner, when called upon to plead, takes no notice at all, it may be playing all the time with some trifling article, and in any case standing perfectly mute and apparently unconcerned [see *Archbold's Criminal Practice*, p. 160, 21st edit.]. Secondly, in any case, a jury may be asked to say, specifically, whether such a prisoner is *able to plead or not*. The mental capacity of an accused person to plead to an indictment may always be thus raised because, by Common Law, a man who becomes insane (even though he was sane when he committed the act with which he is charged) before trial (that is, so insane as not to understand the

proceedings) ought not to be called upon to plead. And if a jury think that a prisoner, at the time of the trial, from defect of his faculties has not sufficient intelligence to understand the nature of the proceedings against him, they ought to find that he is not sane; and, under such a finding, he may be kept in custody, under the Acts presently mentioned. The third and remaining form in which the inquiry whether a prisoner is sane enough to plead may be made—and that, indeed, in which it is now most commonly made—is by asking the jury, not (as in the form secondly indicated) whether the person indicted is “able to plead or not,” but whether he is *sane* or not. A person who “on arraignment” (that is, on being asked to plead) is found by a jury to be insane, is not tried, but is kept in confinement “until Her Majesty’s pleasure shall be known” (see 39 and 40 Geo. III, c. 94, sec. 2, as to felonies, and 3 and 4 Vict., c. 54, sec. 3, as to misdemeanours).

In cases where the accused is, obviously and incontestably, insane, the inquiry whether he is sane enough to plead is often made nominally, as a preliminary one, but really for the purpose of technically bringing him under the operation of the Criminal Lunacy Acts, without the waste of public time which a trial of the case on its merits would necessitate. In such cases, the prison authorities usually arrange for a question of the sanity of the prisoner whom they think to be insane to be raised on his arraignment, as this, in the event of his being found to be unfit to plead, is a short mode of disposing of the case. When such arrangements are made, the medical witnesses called to establish the insanity are usually not cross-examined,—indeed, the prison surgeon is usually amongst their number. This practice is, on constitutional grounds, not quite unexceptionable. For, although it is, perhaps, not very probable that such a thing would happen, such procedure *might* possibly, in troubled times, be perverted into a convenient means of getting a troublesome political opponent out of the way. It should, for this reason, be watched with some jealousy, and affords an additional reason for urging the reform in the mode of making the inquiry whether a person is sane or insane, which has been suggested on a previous

page of this work (see Introductory Chapter, *ante*, at p. 57).

Where the circumstances render such a course desirable, the judge may, if he pleases, ask the jury all three of the questions above indicated, namely, (1) whether the prisoner is mute of malice or by the visitation of God; (2) whether he is able to plead; (3) whether he is sane or not [*R. v. Pritchard* (1836)].

If any question arise as to the mental fitness of a prisoner who has been called upon to plead, the judge, and the members of the Bar who are engaged in the case, will see that the question, thus arising, is left to the jury in the form which the circumstances render most appropriate. But a medical witness will always be wise, before giving his evidence, to make himself sure as to whether the question of the prisoner's ability to plead has been raised upon the general merits of the case, or if it has been raised before the prisoner has pleaded,—and, in the latter event, in which of the three forms mentioned above the question is about to be submitted to the jury. Having ascertained this, the witness will be able to direct his evidence to the very point which the jury are called upon to decide. Sometimes it happens that an accused person perfectly understands all that is going on, and is consequently in a fit state *to plead*, but was nevertheless so insane at the time when the act with which he is charged was committed as to be wholly irresponsible for it. The same medical witness may, without any inconsistency, depose to each of these two facts.

Occasionally, the friends of an accused person cause the defence of insanity to be suggested on his behalf, while the accused himself, at the trial, declares and insists that he is perfectly sane. In such a case, the accused may be allowed to suggest to the judge (who will then put them to each witness) questions intended to negative the supposed insanity. The judge will also, at the request of the accused, call additional witnesses for a like purpose.

This practice will be followed when the question as to the prisoner's ability to plead is raised, as well as where he is being tried upon the merits.

If, either upon a question as to a prisoner's fitness to plead, or upon a trial upon the merits, there be any reason to suspect that the accused is feigning insanity, due weight should be paid to the observations upon "Feigned Insanity" which have been made in the Introductory Chapter to this work (*ante*, pp. 45—57).

The correct course when a question arises, either as to the mental fitness of an accused to plead, or upon a trial of a case on its merits, appears to be that those who suggest incapacity must prove it. One judge has, at all events, so decided [Justice Cresswell in *R. v. Turton* (1854), differing from a previous case of *R. v. Davies* (1853), where the prosecution was made to begin, and to prove affirmatively the sanity of the accused]. The reason why the course indicated as correct is thought to be so is because it is a fundamental presumption of Criminal Law that every man is deemed to be sane, till the contrary is proved.

Whatever be the form in which the question is left to the jury, if they find that an accused is incapable of pleading on the ground of insanity [and it is the duty of the judge to expressly ask them this question; see *dictum* of Mr. Justice Holroyd in *Burrow's case* (1823)], such accused is directed, by the Statute Law already referred to, to be confined till the Queen's pleasure be known (see *ante* as to Criminal Lunatics). If, on the other hand, the jury negative any supposed incapacity to plead, and think that the accused perfectly well knows, and understands, what is going on, the Court has power to order a plea of "Not Guilty" to be formally entered for him [see 7 and 8 Geo. IV, c. 28, sec. 2].

If a prisoner, who is mentally unfit to plead, be, by mistake, placed upon his trial, and his unfitness to plead become apparent in the course of the trial, the judge may, in his discretion, discharge the jury [*Bac. Abridg. Idiot B.*, 1 Hale, 36].

Moreover, should no question of the prisoner's fitness to plead be raised till after his trial "upon the merits of the case" has begun, the two questions, as to his mental capacity to plead, and as to his sanity or insanity at the time of committing the act, with which he is charged, may be left

to the jury together, at the end of the trial [see *R. Southey* (1865) ; and see also 39 and 40 Geo. IV, c. 94].

The second stage of his trial, at which the question of a person's sanity may arise, is when he is being tried "upon the merits of the case," as it is called. If no preliminary question be raised as to the capacity of the accused to plead, the trial takes place upon the "merits of the case,"—that is to say, on the whole circumstances of such case. The broad question whether or not, at the time when the act alleged against him was committed, an accused was in such a mental condition as to be criminally responsible, can be raised during a trial "upon the merits." Indeed, this is, in practice, the ordinary way in which questions of criminal responsibility arise.

Before proceeding to consider the principles of law which determine the Criminal Responsibility of an insane person, it is necessary to earnestly impress upon medical men the fact that when in the witness-box they must always be very careful not to express any opinion with regard to the "responsibility" of the accused. For responsibility is a question of law—or at best of mixed law and fact—with which medical witnesses, as such, have nothing whatever to do. A medical witness ought therefore to decline (even if invited) to do more than express an opinion as to the mental condition of the accused at the time of the commission of the act charged as a crime. In the words of the late Mr. Justice Crowder, addressed to a medical witness nearly fifty years ago—"We do not want your opinion as to the prisoner's responsibility. Simply give your opinion from what you know, and from the evidence you have heard, as to the state of her mind." [*R. v. Richards* (1858).]

Prefaced by this emphatic caution, a sketch of the legal principles affecting an insane person's responsibility will be useful, as well as interesting. Such a sketch will enable the medical witness to select appropriate language in which to express his opinion as to a prisoner's capacity, having in his mind, however, at the same time, the principles by which the responsibility of the insane is governed by law. While, as has already been said, he will carefully avoid using the word "responsibility," he may properly say either

that "in my opinion the prisoner was prevented by mental disease from discriminating between right and wrong," or that such prisoner "was prevented by mental disease from exercising any choice between the two"—in other words "could not help it,"—or may use some phrase of similar import, selected by him after ascertaining the principles of the law as to the responsibility of the insane. For everyone is supposed to know the law.

The law of England as to the criminal responsibility of an insane person has, like the rest of the English Common Law, grown very gradually, and appears to develop with the times. It cannot, consistently with either its spirit or its history, be said to have, at any time, suddenly become stereotyped and rigid. It will be best understood by a short statement, in chronological order, of the views which have, from time to time, prevailed in it, before its present principles are discussed.

Originally, the insanity of an accused afforded no defence whatever in point of law—at all events, on charges of murder. From very early times, however, it grew to be the practice that when, in such cases, a special verdict was returned, saying that the accused had committed the act charged against him, but that he was mad at the time when he did it, he would, on this, be granted a pardon; and in time it grew to be considered that he was entitled to one [see *Stephen's History of the Criminal Law*, vol. ii, p. 151]. A similar practice was followed as to a person who killed another in self-defence, or by misadventure. In those early days, however, the only form of insanity which entitled an accused to leniency such as this, appears to have been a *permanent* insanity. For we hear of a case, which arose in 1330, where a woman drowned herself while in a state of frenzy. Now suicide, being self-murder, is a felony, and if committed by a responsible agent, according to old law causes forfeiture as such. Accordingly, a jury were asked, in conformity with the law of those days, whether the malady took her from day to day or only at times, and, on their saying that it only did so "at times," her goods were declared to be forfeited [see *Stephen's History of the Criminal Law*, vol. ii, at p. 150, n. I].

Coke (*circa* 1626) makes only a slight mention of the law prevalent in his time, as to the sort of insanity which would excuse from criminal responsibility, and therefore but little information can be derived from what he says. Hale, who wrote half a century later than Coke (*circa* 1670–75), gives us information from which we may gather that the law continued to be, in substance, very much what we have seen that it was in the fourteenth century, and in Coke's time. Indeed, Hale plainly tells us that, when he wrote, "Partial insanity" (by which he meant intermittent insanity) "is no excuse. . . . This is the condition of very many, especially of melancholy persons, who, for the most part, discover their defects in excessive griefs and fears, and yet are not wholly destitute of the use of reason; and this partial (*i. e.* intermittent) insanity seems not to excuse in the committing of any offence." [Hale, P. C., 30.] And he adds that it is "very difficult to determine the invisible line that divides perfect and partial insanity; but it must rest upon circumstances duly to be weighed and considered both by judge and jury, lest on the one side there be a kind of inhumanity towards the defects of human nature; or, on the other side, too great an indulgence given to great crimes. The best measure I can think of is this: such a person as labouring under melancholy distempers hath yet ordinarily as great understanding as a child of fourteen years hath, is such a person as may be guilty of treason or felony." [Hale, P. C., 29, *et. seq.*] The late Sir James Stephen, with regard to the last sentence, observes: "Surely no two states of mind can be more unlike than that of a healthy boy of fourteen, and that of a man 'labouring under a melancholy distemper.' The one is healthy immaturity, the other diseased maturity, and between them there is no sort of resemblance." [*Stephen's History of the Criminal Law*, vol. ii, p. 150.]

The doctrine that, to render a man irresponsible, there must exist a total and permanent, and not merely an intermittent, loss of understanding, apparently prevailed for at least half a century after Hale's time; and in 1724 occurred a case of *R. v. Arnold*. Arnold had a delusion that Lord Onslow was the cause of all the turmoils and disturbances

which took place in the Country, and that devils and imps were nightly sent into his bedroom, by that nobleman, to disturb him and plague him. He (not unnaturally, under the fancied circumstances) shot Lord Onslow. The defence of insanity was set up, and the fact of his insanity was deposed to by his relatives and others; *but there was no medical evidence of it*. The judge (Mr. Justice Tracey), in his summing up, told the jury that "the question was whether this man had the use of his reason and sense;" also that "he must be able to distinguish between good and evil," and that, if the prisoner could not do this, "though he committed the greatest offence, yet he could not be guilty of any offence against any law whatsoever; for guilt arises from the mind, and the wicked will and intention of the man." These passages are not, indeed, inconsistent with modern ideas. But the judge, echoing the views of Coke and of Hale, further told the jury that the prisoner was not entitled to be acquitted, on the ground of insanity, "unless he was *totally* deprived of his understanding and memory, and doth not know what he is doing any more than an infant, a brute, or a wild beast"!! The prisoner was found guilty, but, it is pleasing to add, was reprieved at Lord Onslow's request.

Thirty-six years after Arnold's case, namely in 1760, Lord Ferrers was tried by his peers, of the House of Lords, in Westminster Hall, for murdering one Johnson. Lord Ferrers, erroneously supposing the latter to have helped to procure a Private Act of Parliament by which his Lordship had been divorced from his wife; to have cheated him over certain coal-mines; and to be generally in league with his enemies; had killed Johnson out of revenge. Moreover, he had been previously heard to threaten to treat Johnson with violence. He had, too, murdered him with great coolness and deliberation, and had acted rationally after inflicting the injury which proved to be fatal. His relatives spoke as to the insanity of the accused, and they also proved that an uncle of his, and another of his relatives, had been insane; while a medical man said that certain acts which Lord Ferrers had committed *were evidence of insanity*. In the then state of the law, Lord Ferrers was compelled to defend

himself, and to seek to establish his own insanity! His peers thought that he had failed to prove it, and found him guilty. Inasmuch as the trial was by the peers, there was neither judge to sum up, nor any *authoritative* exposition of the law. Sir William Follett, when, as Solicitor-General, prosecuting in *MacNaughten's case*, said, with approval, that in Lord Ferrers' case "the then Solicitor-General, afterwards Lord Chancellor,* stated that if there be a total permanent want of reason, it will acquit the prisoner; if there be a total temporary want of it when the offence was committed, it will acquit the prisoner: but if there be only a partial degree of insanity, mixed with a partial degree of reason—not a full and complete use of reason, but (as Lord Hale carefully and emphatically expresses himself) a competent use of it, sufficient to have restrained those passions, which produce a crime—if there be thought and design, and a faculty to distinguish the nature of actions, to discern the difference between moral good and evil; then, upon the fact of the offence proved, the judgment of the law must take place."

Shortly after Lord Ferrer's case, two powerful causes combined to bring about a great change in the spirit in which insanity was regarded by the public. In the first place, the celebrated 'Commentaries' of Blackstone appeared in the very next year (1765), which, it will be noted, just completed a

* Yorke. It is a singular coincidence that (as is largely believed) this Yorke himself committed suicide during a fit of temporary insanity. He was the second son of Philip, first Lord Hardwicke, the well-known Lord Chancellor. At the earnest solicitation of George III he accepted the office of Chancellor in the Duke of Grafton's Ministry. This he did on the 17th January, 1770, and died suddenly only three days later, namely, on 20th January, 1770. It had been intended to create him a peer by the title of Lord Morden, but his death occurred before his patent of nobility had received the Great Seal. He appears to have been a religious man, and he is known in literature as the principal contributor to what are called 'The Athenian Letters.' As a law officer of the Crown he instituted the prosecution of Wilkes. He was never formally installed as Lord Chancellor, neither does his name appear on the Close Rolls as such. Whether he committed suicide as above stated or died suddenly has been the subject of much controversy, but the Duke of Grafton in a manuscript statement set out in Lord Campbell's 'Lives of the Chancellors' (vol. v, pp. 423-4), expressly says that he became insane. For further details as to him see Campbell, *ubi sup.*; Walpole's 'Memoirs of George III,' vol. iv, p. 49.

century since the time of Hale. Whether or not a gentler spirit had, before their publication, already begun to spring up amongst people generally, the fact is undeniable that the writings of the great Blackstone breathe a spirit of humanity which was, till then, strange alike to English Law, and to the English Bench and Bar. He quotes, with approval, both the remark of Montesquieu, that "the excessive severity of laws hinders their execution," and also the observation of Beccaria, that "crimes are more effectually prevented by the *certainty* than by the severity of their punishment;" and at the same time (anticipating Sir Samuel Romilly) laments that (as was then the case) our English Penal Law made no less than 160 offences punishable with death. The term used by him for insanity is the simple expression "mad," and he says that one who is "mad" ought neither to be compelled to plead, nor to take his trial [see *Bl. Comm.*, vol. iv, p. 24].

The second cause which led to a gentler feeling growing up, with regard to mental disorder, was the attack of insanity with which George III was afflicted. This, towards the close of the eighteenth century, caused such matters to receive an attention, and a study, which they had never before obtained. Not only was public attention directed to the subject of mental diseases, but sympathy and kindness began to be universally extended to those who were mentally afflicted.

The two softening influences, to which we have referred, soon made themselves evident in our Common Law. As yet we have not been able to refer to a single instance in which the defence of insanity had been successfully set up. But in the first year of the present century one arose. In 1800, one James Hadfield shot at King George III, with a horse pistol, in Drury Lane Theatre. Hadfield was at once arrested, and was subsequently tried before Lord Kenyon for high treason. The charge against him being one of treason, Hadfield (more fortunate than poor Lord Ferrers had been) was defended by counsel, by whom the jury was addressed on his behalf. The brilliant Erskine appeared as the prisoner's advocate. That the prisoner had shot at the King could not be denied, but the defence of insanity was set up on his behalf. In support of this defence, it was stated that Hadfield had been wounded

in battle ; that he had shortly afterwards been dismissed from the army as insane ; that he had always, since receiving his wound, been out of his mind from early spring to the end of the dog days ; that, when out of his mind, he entertained various delusions ; that he had, a day or two previously, threatened to dash out the brains of a favourite child, saying that God had commanded it. There also was medical evidence of the prisoner's insanity. It had, in anticipation of the defence of insanity, been, on the other hand, shown that the prisoner had acted and spoken rationally immediately before and after the act. Such were the facts stated, and afterwards proved. But Erskine, in an eloquent speech for the defence, had also said that Hadfield "imagined that he had constant intercourse with the Almighty Author of all things ; that this world was coming to a conclusion, and that, like our blessed Saviour, he was to sacrifice himself for its salvation ; and so obstinately did this morbid image continue that you will be convinced that he went to the theatre to perform, as he imagined, that blessed sacrifice ; and, because he would not be guilty of suicide, though called upon by the imperious voice of Heaven, he wished that, by the appearance of crime, his life might be taken from him by others." Soon afterwards Lord Kenyon intervened and stopped the case. At the moment when he did so, much of Erskine's defence had not been proved. Indeed, he had, at the moment, still some twenty witnesses ready to be called. Lord Kenyon, when he interfered and stopped the case, told the jury, "With regard to the law, as it is laid down there can be no doubt on earth. To be sure, if a man is in a deranged state of mind at the time, he is not criminally answerable for his acts ; but the material part of the case is whether, at the very time when the act was committed, the man's mind was sane." And then, after some further observations, the learned judge is reported to have continued :—"His sanity must be made out to the satisfaction of a moral man, meeting the case with fortitude of mind, knowing he has an arduous duty to discharge ; yet if the scales hang anything like even throwing in a certain amount of mercy to the party." With these directions to guide them, the jury, without hesitation, found that Hadfield was insane at the time when he committed the act with which he

was charged. Upon this case, Mr. Justice Stephen remarks [*History of the Criminal Law*, vol. ii, p. 159] that Hadfield "clearly knew the nature of the act—namely, that he was firing a loaded horse pistol at George III;—that he also knew the quality of the act—that it was what the law calls high treason. He also knew that it was wrong (in the sense of being forbidden by law), for the very object with which he did it was that he might be put to death, *that so the world might be saved*; and his reluctance to commit suicide shows that he had some moral sentiments."

A reaction against the merciful and humane treatment of insane criminals, of which *Hadfield's case* in 1800 was amongst the firstfruits, took place some years later, namely in 1812, first in *Bellingham's case*, and subsequently in that of *Bowler*. In the former, Mr. Spencer Perceval, the then Prime Minister and Chancellor of the Exchequer, was shot by Bellingham in the lobby of the House of Commons.

Bellingham was "a man with a grievance," and was, if he was a madman at all (a question on which so great a diversity of opinion has existed that it will be necessary to discuss the matter below, see p. 185), a good typical example of that most dangerous class of madmen. He was at one time engaged in trade with Russia, and having in the course of business visited that country, was twice placed in prison while there. Lord Gower, who was at that time the resident British Ambassador in Russia, on being appealed to by him, expressed his opinion that Bellingham's imprisonment was, under the circumstances, proper. But the latter, having returned from Russia, laid his imaginary grievances before the King and the Privy Council by petition. He did not consider that he had obtained any satisfactory result from this procedure, so he next proceeded to petition Parliament; but, as compliance with his petition would have involved the necessity of a Treasury grant, his petition was, according to the then practice, referred to the Chancellor of the Exchequer (who happened to be Mr. Spencer Perceval), and he in his turn reported "that he thought that the case was not of a nature for the presentation of a petition." The records of the day (see *Annual Register for 1812*, p. 75)

say that about that time he addressed to "several Members of the House, a statement of his grievances." A copy of his petition, and of the circular in which it was enclosed to M.P.s, will be found printed in full in *the Times* of 14th May, 1812, but are too long to reprint here. They do not appear, on the face of them, to afford any evidence of insanity or even of incoherency. Exasperated at these repeated failures, Bellingham went to a tailor and ordered a coat with a pocket of such a make that he could conceal a pistol in it. Having been supplied with this coat, he wrote to the magistrate at Bow Street a letter. In this letter, after stating his case and saying that he would once more solicit His Majesty's Ministers through the magistrate, he went on to state his intention, should he fail to obtain redress in that way, as follows:—"I shall then feel justified in executing justice myself: in which case I shall be ready to argue the merits of so reluctant a measure with His Majesty's Attorney-General, wherever and whenever I may be called upon to do so. In the hopes of averting so abhorrent but compulsive an alternative, I have the honour to be," &c.

The Magistrate communicated the contents of this letter to the Secretary of State, but Bellingham again failed to obtain the redress to which he supposed himself to be entitled, and immediately proceeded to carry out his threat. For, on the 11th May, he proceeded to the lobby of the House of Commons, and having hid himself behind the folding doors there, shot the first Member of the House who came by. This happened to be Mr. Spencer Perceval, who, after filling the offices of Solicitor-General and Attorney-General, had gained the position of Chancellor of the Exchequer and Prime Minister. It may at first sight be thought that a motive for Bellingham's act is supplied by Mr. Perceval having, as Chancellor of the Exchequer, advised an unfavorable reply to be given to his petition. It is pretty plain, however, that this was not the case, and that Mr. Perceval being the victim was a circumstance as much accidental as was the shooting of Mr. Drummond by Mac-Naughten, in mistake for Sir Robert Peel. Indeed, Bellingham himself repeatedly avowed that he had no personal

animosity towards Mr. Perceval, and that he would have shot Lord G. L. Gower or Mr. Ryder, if either of them had happened to pass first. Mr. Perceval, directly he had been shot by Bellingham, was taken into a room adjoining the lobby, forming part of the Speaker's apartments, and there died in less than a quarter of an hour. Meanwhile the assassin had been seized directly he had fired at Mr. Perceval. Upon some one in the crowd exclaiming, "Where is the villain?" he had at once replied, "I am the unfortunate man; my name is Bellingham: it is a private injury; I know what I have done; it was a denial of justice on the part of the Government."

After Bellingham had fired at Mr. Perceval, and been seized as just mentioned, he was at once taken before Justices of the Peace for examination, as a number of these, who had jurisdiction to deal with the matter, were within the precincts of the House at the moment. The examination took place in a room within the precincts of the House of Commons itself, in which a Court was hastily constituted. Bellingham, while under examination, appears to have at once assumed the attitude which, till his death, he afterwards consistently maintained, namely, that his unredressed grievances *justified* his act, which, he said, he could not consider as other than one of a private nature [see *Times*, 12th May, 1812, for a full account of Bellingham's examination]. When, during the examination, a Member described how he had supported Mr. Perceval into the Secretary's room, and how he had, a few moments later, died in the witness's arms, Bellingham shed tears [see *ibid.*]. The result of the examination was that Bellingham was at once committed for trial, at the next Old Bailey Sessions, for the wilful murder of Mr. Perceval, and was, the same evening, removed to Newgate under a strong escort of cavalry. *The Times* of the next morning remarked:—"He who now awaits his trial . . . was incited by no religious zeal; so far as we can yet learn, was inflamed by no personal injury or insult; but yet seems to have committed the most daring and hideous of murders in the mere wantonness of villainy, or the indiscriminating rage of despair from misfortune, produced by his own folly or perverseness." [*Times* leader, 12th May,

1812]. While *The Times* thus commented upon his act, some light is, perhaps, thrown upon Bellingham's state of mind with regard to it, by a letter which he wrote from Newgate on the evening of the day on which he had been sent for trial, for the act which he had committed but a few hours previously. In this letter he remarked that his killing Mr. Perceval was a "melancholy, yet necessary catastrophe," and said that his approaching trial would "unfold the guilty party," and went on to ask for some small articles to be sent to him; while he added in a postscript to the letter, "please add the Prayer Book" [see *Times*, 12th May, 1812]. In Newgate, he again declared, as we learn from the same source (one by no means prejudiced in his favour), that "he had no malice to Mr. Perceval, and that if Lord G. L. Gower, or Mr. Ryder, had first appeared before him, he would have fired upon either." Such an act as the assassination of the Prime Minister of the day, in such a place, naturally caused considerable public excitement. In the extract from it which has been given above, it is most probable that *The Times* accurately reflected (as it generally does) the views of the public. We learn, too, that Court and Public Ceremonials were postponed; Addresses to the Prince Regent voted by both Houses of Parliament; by the City of London; and by the Universities [see *Times*, 15th May, 1812]; while a handsome provision [£50,000 down and an annuity of £2000 to the widow] for Mr. Perceval's family was voted by Parliament, as well as a monument to him in Westminster Abbey [see *Times*, 16th May, 1812].

Men were probably saying to one another that this was the result of the leniency shown in *Hadfield's case* a few years before, and that, in future, murderous assailants of public men must be more sternly dealt with. In the midst of this excitement, and only four days after he had killed Mr. Perceval, Bellingham's trial came on. Justice, when she is so "speedy" as on this occasion, always, perhaps, becomes dangerously similar to "Lynch Law," and she is apt, when surrounded by excitement, to forget the calm dignity with which she ought always to be encompassed. Moreover, even in these days it would be considered that from Monday evening to Friday morning was too short a time to allow

of adequate preparations for a proper defence being made ; and in the state of locomotion existing at that time, and with a prisoner who was best known in the North of England, it was obviously inadequate. Accordingly, when the Court sat it was at once asked to order a postponement of the trial. This Court consisted of Chief Justice Sir James Mansfield, Mr. Baron Graham, and Mr. Justice Grose ; and as confusion has sometimes (even in legal works) arisen from the name of the presiding judge, it is well, in passing, to point out that Sir James Mansfield, the Chief Justice of the Common Pleas, who presided, was no relation whatever of the great William Murray, Earl of Mansfield, who had died nearly twenty years previously (viz. in 1793),—the identity of name merely arising from the then Chief Justice of the Common Pleas having probably derived his surname from the same place as that from which the Earl, whose name is so familiar among lawyers, took his title. The Court, thus constituted, had the Recorder of London sitting with it. The first application to postpone the trial was made to it before the prisoner had pleaded to the indictment, and the Court refused it on the highly technical ground that, till he had pleaded to the indictment, it did not know what the prisoner was charged with. Bellingham was accordingly forced to plead to the indictment then and there. This he did, after he had first “complained of the hurrying on of his trial, and that the documents, on which alone he could rest his defence, had been taken from him, and were in the possession of the Crown ” [see *Annual Register* for 1812, appendix to “Chronicle” at p. 305 ; and *Times* of 16th May, 1812]. After he had pleaded, a second application to postpone the trial was made, supported by affidavits. This, too, was refused, Chief Justice Sir James Mansfield giving the reasons of the Court (which are reported fully in *Times*, 16th May, 1812), and stating them to be that no *specific* acts of insanity were shown by the affidavits (it will be remembered that the very ground for the postponement asked for was to allow time to get up the details of the defence), and concluding by saying (and this in the presence of the jurymen, who were waiting to try the case with impartial and open minds) that “it was as clear as daylight that, at the time of the commission of this deed,

he was in a sound state of mind." The Court refused the application. [*Times*, 16th May, 1812.]

In reading the report, even now, we can see from it that the prisoner's counsel (Mr. Alley) was, to use the slang phrase current now at the Bar, throughout "sat upon" severely by the Court, with the aid (though they apparently hardly needed it) of the Recorder of London, and still more of Mr. Garrow, one of the counsel for the prosecution, who in later years became Baron Garrow (in which character he was not very favorably known). Indeed, the Court appears at one time even to have told the prisoner's counsel (this to an advocate to whose client the matter was one of life and death) that they would not hear him! Well, indeed, might Lord Erskine, as Lord Brougham tells us [*Hansard*, vol. lxvii, p 730], be greatly "moved to indignation," and well might Lord Brougham himself (though approving of the verdict) say that the judge who presided "was most profoundly to be blamed"! After a postponement of the trial had been thus peremptorily refused, the prisoner's counsel (Mr. Alley) had no choice but to set up the defence of insanity, with such materials as he had at his hand at the moment. These, in truth, were but slight; indeed, the compiler of the *Annual Register* for 1812 [at p. 75] summarises their effect by saying that, at the trial, "there was a slight attempt to prove him insane." What this slight attempt was, we, however, can learn in greater detail both from *The Times* of 16th May, 1812, which gives a full report of the trial, and from a later page of the *Annual Register* itself, which tells us that, "The evidence for the prosecution being closed, the prisoner was called upon for his defence. He proposed to leave it to his counsel, but was informed that they were not allowed to address the Court in his defence. He then addressed the jury in a speech of an hour's continuance, interspersed with the reading of the documents, which were restored to him in the Court, and commenting upon them. He thanked the Attorney-General for his resistance to the plea of insanity set up by his counsel; because, if it had succeeded, it would not have answered the purpose of justification. He was obliged to his counsel for their intentions, but said that he had never incurred the

charge of insanity, with the exception of a single instance in Russia, when the pressure of his sufferings had exposed him to that imputation. As to the lamentable catastrophe for which he was brought on his trial, no one could feel deeper sorrow for it than he did ; and he solemnly disclaimed any personal or premeditated malice towards Mr. Perceval, on whom the unfortunate lot had fallen, only as a leading member of an Administration which had refused him redress for his unparalleled wrongs. He then entered into a detailed account of the injuries which he had experienced, which it is not necessary here to relate, as having nothing to do with the crime he had perpetrated, further than to show the deep impression it had made on his mind ; and he concluded with expressing his confidence that it was impossible by the laws of his country to convict him of the crime of wilful murder, unless it could be proved that he had *malice prepense* against the unfortunate gentleman, which he utterly denied. Three witnesses were then called, the first and principal of whom, Mrs. Phillips, said that she had known him from his childhood ; that his father died insane, and that he himself had all his life been in a state of derangement, particularly since he came from Russia, and whenever he talked on this subject for the last three years. The second stated her opinion of his insanity for the last two years. The maid of the house where he lodged in Millman Street deposed that she thought his manner confused and deranged for some time past, but admitted that he had always been respected in the house as a regular and orderly person." [*Annual Register* for 1812, Appendix to "Chronicle" at pp. 306, 307.]

The foregoing summary must be supplemented by remarking three further facts ; namely, that, in the course of the trial, it transpired that no medical evidence could be called, because, of the two medical men, who were specialists in insanity, that had been applied to, the professional engagements of one prevented his attendance (at this short notice) on the day fixed for the trial, while no answer at all had been received from the other. A second fact, which is worth particular notice, is that, while we are told, both in *The Times* (16th May, 1812) and in the *Annual Register*

for 1812 itself (at p. 307), that Bellingham proposed to leave his defence to his counsel, he was forced to make the speech for the defence himself, and that this speech appears, from the report in *The Times*, to have been a rambling statement of his own grievances, which occupies about a column and a half of that paper. A third fact to be noted is that, at the conclusion of his harangue, Bellingham called upon Lord G. L. Gower (who was in Court) inviting his lordship "to contradict him if he could" (*Times*, 16th May, 1812).

After the defence was concluded, and the Attorney-General had replied for the prosecution, the *Annual Register* tells us that "Sir James Mansfield charged the jury nearly to the effect of the Attorney-General's speech." This reads extremely as if the summing-up of the learned Chief Justice was thought by those who heard it to be very like another speech for the prosecution. But, that justice may be done to Chief Justice Sir James Mansfield, the words of his summing up, as they were quoted years later by Lord Lyndhurst [*Hansard*, vol. lxvii, p. 718], will here be given.

They were as follow:—"There is a species of insanity where people take particular fancies into their heads, who are sane and sound upon all other subjects; but this is not a species of insanity which can excuse any person who has committed a crime, unless it so affects his mind *at the particular period when he commits the act*, as to disable him from distinguishing between good and evil, or to judge of the consequences of his actions." Further, the jury were directed to find the prisoner guilty, if they thought that he "had a sufficient degree of capacity to distinguish between good and evil, and to know that he was committing a crime, when he committed this act." The report in *The Times* (May 16th, 1812) bears out, however, the spirit of the extract from the *Annual Register* which has been given before. Every person, of any experience in criminal trials, knows that more depends upon the way and manner in which things are put to a jury, than even upon the actual words which are used. And Chief Justice Sir James Mansfield appears to have put the matter to the jury, as it were, negatively, telling them that they, in certain events,

could not acquit the prisoner; “neither could the plea of insanity be of any avail, unless it be that the prisoner, when he committed the act, was so far deranged in his mind as not to be capable of judging between right and wrong” [*Times*, May 16th, 1812]. After a trial, under circumstances such as we have seen, conducted in the hurry which has been described, and concluded by a summing-up the spirit of which is even now plain, it is not to be wondered that the jury found a verdict of “Guilty.” After the verdict, the prisoner was sentenced to death by the Recorder of London. On the evening of the trial, the wretched man wrote to a friend a letter as follows:—“I lost my suit to-day, through the improper conduct of my attorney and counsel Mr. Alley, in not bringing my witnesses forward (of which there were more than twenty). In consequence the judge took advantage of the circumstance, and I went on the defence without having brought forward a single friend—otherwise I must inevitably have been acquitted.” *The Times*, properly enough, prefaces the above letter with the remark that “Nothing, perhaps, can mark more strongly the frightful distortion of the man’s mind” [see *Times*, May 19th, 1812], though the writer of the observation appears to have made it in a very different sense from that which most people would now place upon it. On the morning of the day appointed for his execution, Bellingham was angry at not being shaved, saying that he wished to appear at the execution *as a gentleman* [*Times*, May 18th, 1812]. At the last, he, on the scaffold, had a conversation with one of the Sheriffs, in which he expressed his regret to his victim’s family, and again asserted that he had no personal malice towards Mr. Perceval, and saying that he hoped that “the melancholy event,” as he called it, would be “a warning to future Ministers to listen to the applications and prayers of those who suffer oppression. Had my petition been brought into Parliament, this *catastrophe* would not have happened” [*Times*, May 16th, 1812]. The execution was carried out in due process of law, so that, to quote the graphic language of Lord Brougham [67 *Hansard*, p. 731], “On Monday 11th May Bellingham committed the act; at the same hour on Monday 18th May his body

was in the dissecting-room." If anything were needed to add to the feelings of disgust with which we read the whole of this repulsive story, it would be supplied when we are told on respectable authority [see *Ashton's Social England under the Regency*] that the unfortunate Bellingham's heart did not cease to beat till about four hours after his body had been opened by the dissecting surgeons. But the entire story is such that well in after years might Lord Campbell, when prosecuting as Attorney-General in *R. v. Oxford* (1840), say, "I will not refer to Bellingham's case, as there are some doubts as to the correctness of the mode in which the case was conducted."

It is impossible to read *Bellingham's case* without regret. The refusal to postpone the trial was utterly inexcusable. The evidence at the trial, even as it stood, leaves it possible, to say the least (and when the prisoner's subsequent behaviour is looked at, it becomes probable), that Bellingham was in truth insane. The question whether Bellingham was insane or not is one on which opinions are divided. However lawyers may be inclined to regard this question, medical men will form their opinions on a review of the prisoner's demeanour. The circumstances of the murder, the letter which, after the manner of madmen, he sent to the authorities to give them warning of the crime he was about to commit, his conduct at the trial, and his letters and behaviour subsequent to that event, seem on the whole to be characteristic of an insane person. The *Annual Register* for 1812, while saying that "no marks of an alienated mind could be observed in him," is obliged to add, "*except his persuasion that what he had committed was perfectly justifiable, and an apparent expectation that the act would be so regarded at his trial*" [see *Annual Register* for 1812, at p. 75 of "Chronicle"]. The importance of the "exception" here made is obvious, and shows that, even in those days, the persistence with which Bellingham, from the moment of the act till his death, assumed the position that his grievances *justified* such act, did not wholly escape attention, and made him—to quote the words of the *Times* (16th May, 1812)—the "self-redresser of *imaginary* wrongs." In the introductory chapter to this work, a quotation of Professor Taylor has, too, been

cited (*ante*, p. 55) in which it is remarked that a person who is really insane will resent all attempts to prove him to be so ; and it will not have escaped notice that this is precisely what Bellingham did. The spirit, and actual words, of the summing-up of Chief Justice Sir James Mansfield are open to criticism in the particulars already indicated. Yet it is some consolation to reflect that, in the main, the blame for the result of the trial rests upon the Ministers of the law, who presided at the trial, rather than upon the law itself. Nor must it be forgotten that the jury who tried the case, although they could only act upon such materials as the Ministers of the law allowed to be brought before them, cannot be held free from all responsibility, since the verdict (given doubtless in the midst of popular anger and excitement) was the verdict of twelve English citizens upon the case, after the law had (with only a variation in the important particular already pointed out) been laid down to them in substantially similar terms to those which had previously, in *Hadfield's case*, rendered possible a humane and merciful verdict. Dr. Orange, in an extremely able and interesting article on "Criminal Responsibility" in *Tuke's Dictionary of Psychological Medicine*, is betrayed into saying that "it will instantly strike the reader that neither in the summing-up of Chief Justice Mansfield (he means Sir James Mansfield) in *Bellingham's case*, nor of that of Mr. Justice Le Blanc in *Bowler's case*, are there any words at all equivalent to that portion of the summing-up of Lord Kenyon in *Hadfield's case*, in which the jury were directed that the material part of the case was "whether, at the very time when the act was committed, the man's mind was sane." What might have been the result supposing the jury in *Hadfield's case* had been charged in the terms employed in *Bowler's case*; or what might have been the result supposing the jury in *Bowler's case* had been charged in the terms employed by Lord Kenyon in *Hadfield's case*, can "only be a matter of conjecture." But the summing-up of Chief Justice Sir James Mansfield, in *Bellingham's case*, as set out above, is given as quoted by Lord Lyndhurst in the debate on *MacNaughten's case* which took place in the House of Lords in 1843 [see *Hansard*, vol. lxxvii, p. 718], and that

of Sir Simon Le Blanc in *Bowler's case* (see *infra*) is extracted from the same source, and it will be noticed that, in each of the summings up, the words placed in italics *were*, substantially, a direction to the effect which Dr. Orange (these passages having escaped his notice) complains was not given.

Crime is curiously epidemic, and madmen and criminals are strikingly imitative. Assuming that both Bellingham and Bowler, who is the subject of the next case, were insane (a question which is in both instances doubtful, and in *Bowler's case* especially problematical), their cases are striking examples to show that, when a startling offence has been committed by one madman, it often happens that another, within a very short time, follows his example. At any rate, Bellingham's fate on 18th May, 1812, did not deter one Bowler from, within a fortnight afterwards (namely on 30th May, 1812), committing an offence very similar to that for which Bellingham had just been hanged on the 17th of the same month—so little is the deterrent effect of punishment upon many of those who are naturally deficient in self-control. On the date just named (30th May, 1812), Bowler armed himself with a blunderbuss, and lay in wait for one Burroughes, a Harrow farmer and a neighbour, whom he then shot, obviously with the intention of killing him. Burroughes did not die, it is true, but the act was in those days a capital offence. Bowler was accordingly tried for his life for it at the Old Bailey before Sir Simon Le Blanc, on 3rd July, 1812.* The prisoner, unlike Lord Ferrers, was defended by counsel. The art of defending prisoners was comparatively new and unknown in those days, for the right of a prisoner to have counsel had then only just been introduced; and perhaps his counsel hardly displayed that tact in conducting the defence which greater experience in criminal defences could in these days secure to an accused person. The prosecution, in anticipation of the expected defence, gave some evidence of the prisoner's

* Singularly enough, *The Times* report states the trial to have taken place on "3rd June." But the date of the paper itself shows that "June" is a mistake for "July," and the Old Bailey Sessions Papers for 1812 (being vol. lxxxix at p. 322) confirm this.

general sanity ; for instance, they proved that he had, shortly before shooting at Burroughes, executed a will ; they also gave some evidence of ill-will on the prisoner's part towards Burroughes, proving that there had been disputes and threatened litigation between him and the prisoner, and that the mere mention of Burroughes' name would throw the prisoner into a rage, and that on at least one occasion he had said " D—n that Burroughes ! I'll Burroughe him before June is out " (he shot him on 30th May). They showed, too, that after the outrage the prisoner knew perfectly well what he had done, and tried to abscond ; and that, when arrested, he had asked to be allowed, for the sake of his family, to be taken to his grand-daughter's house, and confined there ; and said that he would give the witness who took him in custody £10,000 or £20,000 if allowed to do this. It could not be denied that the prisoner had shot Burroughes, neither could the other facts proved by the prosecution be controverted. Some of these facts, such as the premeditation proved and the full knowledge of what he had done, shown by the prisoner after he committed the act, are not very consistent with the contention as to the prisoner's mental condition which was set up. Nevertheless the defence alleged was that Bowler was, at the time of the act, suffering from epilepsy—in what precise form was not made very clear—and witnesses were called to prove the defence. It was said, and was apparently proved, that the accused had, in the previous July, been attacked with a fit, and had never been the same man since. His son-in-law (a solicitor) gave evidence of this, and added the remarkable assertion that on one occasion he had been invited by the prisoner to stand up and dance while he (prisoner) played the gridiron. It was said, too, that Bowler had various delusions—especially one to the effect that he was going to be " exchequered,"—and that he used to eat his meat " almost raw," and that he would lie on the grass exposed to the rain. It was further suggested that he had been watched lest he should commit suicide. To prove this latter fact (among other things) the prisoner's housekeeper was called. She said that she had, on this account, taken away the prisoner's pocket-knife and even

his garters; but on cross-examination she admitted that the prisoner's razors were left with him, and that he was allowed to shave himself, and then (in the words of *The Times* report of the case) "in other parts of her evidence she grossly perjured herself, and swore contrary to the evidence of the witnesses examined on the subject of the will." A servant who was next called was—the report goes on to say—"at fatal variance with the housekeeper in many material parts of her evidence." Other evidence put in for the prisoner consisted of an inquisition dated 17th June, 1812 (a little more than a fortnight before the trial), by which he was found to have been insane as from a date which was suspiciously convenient, namely 30th March, 1812 (the shooting at Burroughes having taken place, it will be recollected, on 30th May in the same year). Medical evidence was also called on the prisoner's behalf. The prisoner's counsel had the great disadvantage of having to make his speech somewhat late at night—for the trial began at 10 a.m., and lasted till after 7 at night. At the close of the trial the presiding judge summed up (Sir Simon Le Blanc, whose summing-up is shortly reported in *The Times* of 4th July, 1812, while an extract from it appears in *Russell on Crimes*, vol. i, p. 118, where it is cited from *Collinson on Lunacy*). He does not appear to have shown any partisanship or undue leaning to either side, and is shortly reported as having told the jury that "the question was whether the prisoner *when he committed the act with which he stood charged* was or was not incapable of distinguishing right from wrong; or whether he was *at that time* under the influence of any illusion in respect to the prosecutor which rendered his mind, *at the moment*, insensible of the nature of the act which he was about to commit, *since* in that case he would not be legally responsible *for his conduct*. On the other hand, provided they should be of opinion that when he committed the offence he was capable of distinguishing right from wrong and *not* under the influence of [such] illusion as disabled him from discerning that he was doing a wrong act, he would be answerable to the justice of his country and guilty in the eye of the law." * The

* This extract is taken from Lord Lyndhurst's report to the House of Lords

jury after deliberating some time returned a verdict of "Guilty." The above quotation from the judge's summing-up, being only an extract, obviously does not contain the remarks which his lordship made upon the *facts* of the case, which the jury were doubtless occupied in weighing while they were deliberating.

A review of the evidence as to these facts must doubtless have been formally laid before the jury. The evidence of premeditation on the prisoner's part of the act with which he was charged, and of his having been perfectly aware of having done it after he had perpetrated it, are totally inconsistent with his having been under the influence of epilepsy at the moment. Neither does the son-in-law's evidence about the accused wanting him to dance to his playing upon the gridiron appear to harmonise with any such theory. The defence (though it does not appear to have ever been put in any very definite form, or based upon any scientific theory) must, under the circumstances, of necessity have been, not that the accused was actually at the moment of the act suffering from epilepsy in any acute form, but that he was then in a state of weakness of mind produced by the epileptic seizure. But here the evidence which was given as to the prisoner's general mental capacity and as to his conduct in connection with the act itself, again raises a difficulty. On the whole, the jury (especially when it is remembered that the popular excitement and alarm caused by Bellingham's act could not at that moment have entirely passed away) probably came to the conclusion that (as is undoubtedly the law) it lies upon those who set up insanity as a defence to prove it strictly, and that they had failed to do this. They may have the more readily come to this conclusion because the evidence, as a whole, had engendered a reasonable suspicion in their minds that the whole of the defence, if not actually "a made-up story," was at least greatly exaggerated. As to the medical evidence, while it would have been entitled to great weight if had been founded upon the actual personal observation of the medical witnesses who gave it, and had not been supplemented by other evidence of the summing up, which was read by him from the shorthand notes, in the debate on MacNaughten's case in 1843 [see *Hansard*, vol. lxvii, 118].

dence, the jury probably thought that, while medical witnesses are always more or less dependent upon the observations and the good faith of others, the facts of the case as a whole, and the evidence which had been given, apart from that of the doctors, made the medical testimony less entitled to trust than professional evidence usually is. The remarks just made are not meant as an argument in favour of the correctness of the verdict of the jury, but rather as a protest against *Bowler's case* being in future cited as an instance of inhumanity, and a legal precedent for barbarity in the administration of the law. The case seems to have been greatly misunderstood, and the facts are at least so doubtful that they hardly justify the remark made by Mr. Baron Alderson in *Reg. v. Oxford* (1840) when he said, "Bowler was executed, I believe, and very barbarous it was." For when all the facts are impartially weighed, it at all events cannot be said that, even in modern days, and in times of no excitement, a jury would be certain to find a different verdict from that which was returned in *Bowler's case*. A failure to consider both sides of this case has apparently arisen from the fact that the short note of the purely legal points in it, which is given by Collinson, has been treated as a fair and complete report of the whole case; this has been copied by one legal text-book from another, and thence into the medical works. The result has been that a very imperfect impression has generally existed as to the real facts of the case. At all events, the insanity not having been proved, *Bowler's case* is no more an authority for the proposition that English law will hang a man who commits a murder during an epileptic fit, than a case in which an *alibi* was set up, *but not proved*, would be an authority for saying that English law will hang a man accused of murder, although he prove that he was elsewhere, and therefore could have had no hand in the crime.

Fortunately public excitement had plenty of time to calm itself down before the defence of insanity again became the subject of investigation in a criminal court in any case exciting great public attention. For some seventeen years elapsed before this again happened, and by that time the humane views, which had been acted upon in *Hadfield's case*

in 1800, had had time to re-assert themselves. In 1829 there arose a very singular case. A serious fire occurred at York Minster, a detailed account of which will be found in the *Annual Register* for that year (1829, at p. 23 of the "Chronicle" for the year). It was eventually discovered that the Minster had been set on fire by a man named Jonathan Martin. He was accordingly indicted for having set fire to the Minster. In *Roscoe's Criminal Evidence*, at p. 948 of 11th edition, it is said:—"The defence was that he was insane. It was proved that he was much under the influence of dreams, and in Court he gave an incoherent account of a dream that had induced him to commit the act, —a voice commanding him to destroy the Cathedral on account of the misconduct of the clergy. Several medical witnesses stated their opinion that he was insane, and that, when labouring under his delusions, he could not distinguish right from wrong. One surgeon said that such persons, though incapable on a particular subject of distinguishing right from wrong, seek to avoid the danger consequent upon their actions, and that they frequently run away and display great cunning in escaping punishment. The jury acquitted the prisoner on the ground of insanity [see also *Shelford on Lunacy*, at p. 465 ; and *Annual Register* for 1829, being vol. lxxi, at pp. 28 and 301].

Two years after *Martin's case* we find the humane principles first displayed in *Hadfield's case* again prevailing in the case of *R. v. Offord* (in 1831). In that case the accused had shot one Chigwell. Both he and the deceased lived at a place called Hadleigh. The accused had a delusion that all the other residents there (especially the deceased) had entered into a conspiracy against him, and were continually issuing warrants against him to take away his life and liberty. Under this delusion, he would go up to strangers in the street and roundly abuse them. In his pocket, when he was arrested, was found a paper, purporting to be a "list of Hadleigh conspirators against my life," containing forty or fifty names and amongst them that of the deceased, and also an old summons about a rate on which prisoner had written, "This is the beginning of an attempt against my life." Medical men gave evidence as to prisoner's insanity,

and said that prisoner was a monomaniac, and might not, when he fired at deceased, have been aware that his act involved the crime of murder. Lord Lyndhurst (then Chief Baron) told the jury, that to acquit the prisoner they must be satisfied that, *when he committed the act*, he was not conscious what its effect, if it proved fatal, would be, with regard to the crime of murder; and that, to be guilty of this, he must have known that he was committing an offence "against the laws of God and Nature." The jury were satisfied that the prisoner was not responsible, and accordingly acquitted him. It will be noted that Lord Lyndhurst substantially gave the jury a direction to the same effect as had previously been given by Lord Kenyon, in *Hadfield's case*, and by Chief Justice Sir James Mansfield, in *Bellingham's case*, namely, that the insanity must have dominated the accused *at the moment of the act*.

Nineteen years passed, and in 1840 Oxford made his notorious attempt upon the Queen with a pistol. He was subsequently put upon his trial at the Old Bailey for this act [see *Times* for 10th and 11th July, 1840]. The act itself could not be denied, but the defence of insanity was set up on the prisoner's behalf. In *The Times* report of the trial (10th July, 1840) it is stated that the accused "advanced with a smile," leaned listlessly in front of the dock and began playing with the herbs * about it, and appeared to be perfectly calm. He was a young man, it is stated, and apparently about eighteen or nineteen years of age, and his own counsel in the course of the case alluded to him as "that unfortunate boy." The judges who presided at the trial were Chief Justice Denman, Mr. Baron Alderson, and Mr. Justice Pattison, the Recorder of London (as was then still usual) sitting with them: the prosecution was conducted by Sir John Campbell, who was then Attorney-General, and Sir Thomas Wilde, Solicitor-General. The short facts of the case were that the prisoner stationed himself on Constitution Hill, where, in broad daylight, and without any suggested motive, he fired two pistols in succession at Her Majesty the Queen,

* The practice of strewing the dock in criminal trials with herbs, which is still formally observed at the Old Bailey, was relied upon as a precaution against gaol fever as recently as fifty years ago.

as she passed by in an open carriage ; and then remained on the spot, saying, " It was I shot at her ;" or, according to another witness, " It was me ; I did it." At all events, he took care to have it known that it was he who had committed the act, being apparently anxious that this should be notorious. On the part of the prosecution, an attempt was made to show that the act was premeditated, and that this was proved by the prisoner having purchased firearms shortly before ; having practised at shooting ; and by the fact that papers which purported to be the rules and circulars of a society called " The Young England Society " were found at his lodgings. For the defence, it was shown that the prisoner's grandfather had undoubtedly been insane, and had actually died in an asylum ; that his father, although apparently never under restraint, was probably insane ; also several witnesses who had known him deposed to strange and eccentric acts on his part ; that while his mother was pregnant with the prisoner the father threw a quart pot at her, which hit her on the head and rendered her insensible for some time ; that another child of the same marriage had been born an idiot [see summing-up of the Chief Justice] ; that from about seven years old the prisoner had been given to crying and laughing immoderately without cause, or indulging in violent conduct without reason, his action in all these respects being apparently involuntary ; that he was generally unstable of mind ; that, though engaged as potboy, he was extremely absent about business, while he had at times annoyed customers by crying out, or bawling aloud ; that the existence of the supposed " Young England " secret society had not been shown ; that its alleged rules and circulars, which had been found at the prisoner's lodgings, were probably only the fruits of his own imagination, produced by its morbid craving for notoriety. Relatives and friends gave evidence that the prisoner was in their estimation a person of unsound mind, and said that he had " spoken of coming to be a great man, and of things quite out of the way." Moreover, a good deal of medical evidence was given in support of the theory of the prisoner's insanity. Dr. Hodgkin (whom medical men will recognise as giving his name to " Hodgkin's disease ") gave evidence that conduct

such as that of the prisoner betokened insanity, and that in his opinion he suffered from "lésion de volonté," or morbid propensity. Dr. Conolly, of Hanwell, had had an interview with the prisoner, and his notes of the case were:—"A deficient understanding. Shape of the anterior part of the head that which is occasionally seen when there has been some disease of the brain in the early period of life. An occasional appearance of acuteness, but a total inability to reason. A singular insensibility as regards the affections; an apparent incapacity to comprehend moral obligations; to distinguish right from wrong; an absolute insensibility to the heinousness of his offence and to the peril of his situation; a total indifference to the consequences of the trial. Acquittal will give him no particular pleasure, and he seems unable to comprehend the alternative of his condemnation and execution. His offence, like that of other imbeciles who set fire to buildings, &c., without motive, except a vague pleasure in mischief."

Another well-known authority on insanity said that he thought the prisoner was suffering from "moral insanity or lesion of the will." It is worthy of notice, in passing, that no objection appears to have been taken by the Court to the term "moral insanity" itself, but Chief Justice Denman, in summing up [*Times*, 11th July, 1840], said that ordinary observers were as able to form a judgment on this matter as any medical man—a remark which appears to admit that the law does recognise moral insanity, if proved; although many would not agree in thinking that ordinary observers could detect it as readily as a medical man. This witness then went on to say that the prisoner was a mixture of unsoundness of mind and imbecility. He also deposed that he had an interview with the prisoner, in the course of which he had told him that he might be "decapitated" for his act, to which the prisoner replied that "he had been decapitated a week ago and a cast made of his head;" and that during the whole of the interview the prisoner was playing with a pencil and a bit of india-rubber. Mr. J. Kennedy Clerk, a general practitioner who had known the prisoner for three years, said that he thought him to be labouring under imbecility and to be of unsound mind, and not to possess normal control

over his emotions. It will be noted that, as has been observed in the introductory chapter to this work (*ante*, p. 33), the short result of the medical evidence for the defence points to the prisoner suffering from insanity which had developed during adolescence.

In his summing-up, according to the report in 9 *Carlington and Payne* (at p. 547), Lord Denman told the jury that the question was whether the prisoner "*was insane at the time when the act was done*" (thus again adopting the law as to the material time to consider, which had been laid down by Sir James Mansfield and Lord Kenyon). It will be noted, too, that according to this report (which is a legal one written by lawyers for lawyers), the Lord Chief Justice made use of the word "insane," which thus appears for the first time in the charge of a judge to a jury in a criminal case, as furnishing a material element for their consideration. The learned Chief Justice went on, however, to explain to the jury that the sort of "insanity" which will excuse from criminal responsibility is "a disease in the mind as of a person quite incapable of distinguishing right from wrong," and that, to acquit the prisoner, they must think that, at the time of the act, he laboured under "that species of insanity which satisfies you that he was quite unaware of the nature, character, and consequences of the act which he was committing; and that he was under the influence of a diseased mind, and was really unconscious, at the time that he was committing the act, that it was a crime." According to the *Times* report (*Times*, 12th July, 1840), the Lord Chief Justice's summing-up also contained an exceedingly important passage as follows; viz. that "if a man were the agent of a controlling disease which he could not at all resist, he was not then held to be a guilty party, and he would be entitled to an acquittal on that ground." The prisoner was acquitted by the jury on the ground of insanity.

We next come to a well-known and much discussed case. This is the celebrated *MacNaughten's case*, which occurred about fifty years ago, namely in the year 1843. Like Bellingham, whose case has already been detailed, MacNaughten was "a man with a grievance," and so belonged to the

dangerous class of the insane of which, if we concede his insanity, Bellingham was likewise a member. MacNaughten had in past days taken some local share in politics in Scotland. Fancying that his enemies were plotting and conspiring against him, he had at various times invoked the protection of magistrates and of the public authorities, to protect him against their schemes. Either because the Government and the authorities took no heed of his applications, or because he in some wild way connected Sir Robert Peel with the imaginary plotting against him, he watched Sir Robert's house for some days. Seeing Mr. Drummond, who was Sir Robert Peel's private secretary, frequently passing in and out of the house, he mistook him for Sir Robert Peel himself, and eventually on the 20th January, 1843, labouring under this mistake, lay in wait for him and shot him. For this murder he was tried before Chief Justice Tindal, Mr. Justice Williams, and Mr. Justice Coleridge, at the Old Bailey, 13th March, 1843. As in *Bellingham's case*, the fact that the prisoner had shot at and killed his victim could not be denied, but the defence set up was that of insanity. The fates of Bellingham and MacNaughten were, however, widely different. In *MacNaughten's case* the leading counsel for the prisoner was Sir Alexander Cockburn—then Mr. Cockburn. It was clearly proved that the prisoner had for years had delusions to the effect that he was being persecuted by political opponents in his native town, and that spies were following him about by their procurement. It was shown that long previously to the act with which he was charged he had called upon various police officials and public men and complained of these matters, seeking their good offices to stop the persecution, with which he appeared to be under the delusion that Sir Robert Peel was in some way connected. It was also shown that, when Sir Robert's name was merely mentioned, he had cursed him, at the same time referring to the matters which were the subject of his delusions. The fact that he had mistaken Mr. Drummond, whom he saw several times pass in and out of the front door, for Sir Robert Peel himself, was also proved. As the late Mr. Justice Stephen shortly put it, "MacNaughten being under an insane delusion that Sir R. Peel had injured him,

and mistaking Mr. Drummond for Sir R. Peel, shot Mr. Drummond dead." The accused himself told the medical man who questioned him after the act that "the person, at whom he smiled, scowled at him, gave him a scowling look as he passed him, and all his feelings rushed into his mind at once—all he had suffered for years,—and he thought it would give him peace if he shot him, and he thought him one of the system." Strong medical evidence was given that the man was so insane as to be irresponsible. Mr. Cockburn, the prisoner's counsel, in his questions to his medical witnesses, plainly put the case as one of "partial unsoundness of mind," but at the same time took care also to elicit from them that they did not think that the prisoner, when he shot Mr. Drummond, "knew right from wrong." To avoid repetition, it will be enough to refer here to the description which has previously been given of the eloquent and ingenious way in which the adroit Cockburn conducted the defence [see *ante*, pp. 16, 17]. It ought, however, as we shall hear more of it hereafter, to be noticed that Mr. Cockburn was allowed to call Mr. Forbes Winslow, a specialist in insanity, to say that he had been present in Court, and had heard the whole of the evidence, and that, after hearing it, he thought that the prisoner was insane.

In the result, Chief Justice Tindal, and the two judges who were his companions on the Bench, having stopped the case before the counsel on either side had again addressed the jury, told the latter that the question was, whether they were "satisfied that at the time the act was committed, for the commission of which the prisoner stands charged, he had not that competent use of his understanding as to know that he was doing, with respect to the act itself, a wicked and a wrong thing : whether he knew that it was a wicked and a wrong thing that he had done ; or that he was not sensible at the time he committed the act that it was contrary to the laws of God and man, and also that undoubtedly if he were not so sensible he is not a person responsible" [see *Hansard* 67, 724, where a speech of Lord Lyndhurst's in the House of Lords is reported, in the course of which the speaker quotes the summing-up as it is set out above, stating that, before doing so, he had sent for the shorthand notes].

It will be noted that in this summing-up the precise moment of the act is again pointed out as the material one, and that the judge again also uses the expression that the prisoner to be guilty must "know right from wrong;" while it is further indicated that the act, to be a wrong act, must be one which the prisoner knew to be "contrary to the laws of God and man." The prisoner was acquitted by the jury on the ground of insanity.

The trial in *MacNaughten's case*, it will be noticed (though the fact has not hitherto been observed as generally as it ought to be), distinctly marks a further step in advance in the English Law as to the effect of insanity in criminal cases. Hale, as we have seen (*ante*, p. 171), had laid down distinctly that partial insanity is not a legal defence. In the *MacNaughten case*, Mr. Cockburn boldly and with equal distinctness, put forward the doctrine of partial insanity without any protest from Chief Justice Tindal, who presided at the trial, or either of the two other judges. Not only did the jury adopt the theory put forward for the defence, and acquit the prisoner, but the answers, which, as we shall presently see, were given to the House of Lords by the judges, tacitly admit the doctrine of partial insanity.

MacNaughten's acquittal, while it thus marked what might well, at that time, be considered an innovation in the Criminal Law, excited great public alarm and excitement; indeed, a Bill for dealing with the subject of persons who committed crimes while insane was (though afterwards dropped) actually introduced (by Sir V. Blake) within a day or two (on 7th March, 1843) into the House of Commons [see *Hansard*, vol. lxxvii, p. 424]. With the discussion on the case that arose in the House of Lords, we shall deal presently.

At this point it will be interesting to pause to notice the result of each of the trials of the four assassins, who, during the present century, have respectively sought to kill either the Sovereign or the Chief Minister of the Crown. Each of these may be regarded as, in a sense, a political offender, and in each case the trial may be regarded as a landmark showing the progress of the law as to insanity. In mental condition, Hadfield, Bellingham, and MacNaughten bear considerable resemblance to each other, although the

result of their respective trials was not the same. Hadfield, being charged with treason, had the advantage of being defended by a celebrated advocate in the person of Lord Erskine, who was afterwards Lord Chancellor. MacNaughten enjoyed the advantage of the reformed law which gave every prisoner the full benefit of counsel, and was so fortunate as to have as his advocate Mr. Cockburn, Q.C., who afterwards became Sir Alexander Cockburn and Lord Chief Justice of England. Bellingham, whose case happened in the interval between *Hadfield's case* and *Oxford's*, was defended by a man who has not come down to posterity as a great advocate : and, moreover, in the then state of the law, Bellingham's advocate could only partially defend him ; for—the charge being one of murder, and not of treason—he was not allowed to address the jury on behalf of his client, so that the miserable man (like Lord Ferrers) could only successfully defend himself by making a speech in which he demonstrated his own insanity. Again, both Bellingham and MacNaughten were led by their delusions to suppose that their private grievances rendered the murder they contemplated perfectly justifiable in a moral sense. Hadfield equally thought his act to be morally a right one ; for though quite aware that such act was an offence against the law, and that he would (as he thought) be put to death for it, he nevertheless committed it because it was his belief that it was part of his Divine mission to be put to death.

To return again to *MacNaughten's case*. MacNaughten having been *acquitted*, his case could not possibly come before the House of Lords judicially. Had the prisoner been convicted, his case might indeed have been brought before that House by Writ of Error. But though, as thus explained, the case could not come before the House of Lords judicially, it soon became the subject of discussion in that House (March 6th and 13th, 1843).

In consequence of this Debate, and because the Law Lords who took part in it differed about the result of the case, the House exerting the right of putting abstract questions to the judges (which it had previously asserted on the passing of Fox's Libel Act, and on a question which had arisen as to the Canada Reserves), summoned all the judges, and put to

them an elaborate series of questions as to the Criminal Responsibility of a person who is alleged to have been insane when a criminal act with which he is charged was committed. These questions having been put to the judges on 13th March, 1843, they took over three months, namely till 19th June, 1843, to consider them. At the end of this time they all answered them, except Maule, J., who declined to give a definite answer to them, on the ground that no specific state of facts was presented for his consideration by such questions. His action is, indeed, on principle, not entirely without authority to support it; judges, for instance, have, in a similar manner, always refused to define "fraud," in order to prevent a possibility of ingenious means being devised to evade any stereotyped definition which they might adopt. Perhaps Mr. Justice Maule considered that, for reasons similar to those which make it undesirable to define fraud, it was also inexpedient to lay down any rigid definition of the exact degree of insanity which must be held to excuse from criminal responsibility, or of the terms in which the question as to the mental responsibility of an accused should be left to a jury in such cases.

The questions thus put by the House of Lords to the judges in *MacNaughten's case* must be here set out *verbatim*. All the judges, other than Mr. Justice Maule, were content to simply give answers to the questions propounded. Mr. Justice Maule prefaced such categorical answers as he very briefly gave to the various questions with a sort of protest to the following effect. He said that he felt great difficulty in answering the questions, because such questions did not arise out of, and were not put with reference to, a particular case, or for a particular purpose which might limit or explain the generality of their terms. The questions, and the answers to them (which latter must, in the case of Mr. Justice Maule, be read subject to the protest or qualification with which they were in his case prefaced), are respectively as follows, the portion of the answers which is printed in large type being so printed to emphasize the passages to which the present writers desire to call marked attention, while the *italics* are in the original.

Q. I. "What is the law respecting alleged crimes com-

mitted by persons AFFLICTED WITH INSANE DELUSIONS IN RESPECT OF ONE OR MORE PARTICULAR SUBJECTS OR PERSONS ; as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit ?”

A. I. “ Assuming that your lordships’ inquiries are confined to those persons WHO LABOUR UNDER SUCH PARTIAL DELUSIONS ONLY, AND ARE NOT IN OTHER RESPECTS INSANE, we are of opinion that, notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law—by which expression we understand your lordships to mean the law of the land.”

The separate answer given by Mr. Justice Maule to this question was :

“ So far as it comprehends the question whether a person circumstanced as stated in the question, is for that reason only to be found not guilty of a crime respecting which the question of his guilt has been duly raised in a criminal proceeding, I am of opinion that he is not. There is no law that I am aware of that makes persons in the state described in the question not responsible for their criminal acts. To render a person irresponsible for crime on account of unsoundness of mind, the unsoundness should, according to the law as it has long been understood and held, be such as to render him incapable of knowing right from wrong. The terms used in the question cannot be said (with reference only to the usage of language) to be equivalent to a description of this kind and degree of unsoundness of mind.”

Q. II. “ What are the proper questions to be submitted to a jury when the person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with a crime (murder, for example) and insanity is set up as a defence ?”

The judges, other than Mr. Justice Maule, answered this and the third question together. The separate answer of Mr. Justice Maule was :

“ If on a trial such as is suggested in the question the judge should have occasion to state what kind and degree of insanity would amount to a defence, it should be stated conformably to what I have mentioned in my answer to the first question, as being, in my opinion, the law on the subject.”

Q. III. “ In what terms ought the question to be left to the jury as to the prisoner’s state of mind, at the time when the act was committed ?”

Mr. Justice Maule’s reply to this was :

“ There are no terms which the judge is by law required to use. They should not be inconsistent with the law as above stated, but should be such as, in the discretion of the judge, are proper to assist the jury in coming to a right conclusion as to the guilt of the accused.”

The answer of the judges, other than Mr. Justice Maule, to this and the preceding question, was in the terms following :

A. II and III. “ As these two questions appear to us to be more conveniently answered together, we have to submit our opinion to be that the jury ought to be told in all cases that *every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction* ; and that to establish a defence on the ground of insanity, it must be clearly proved, that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.

“ The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong ; which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally and in the abstract, as when put with reference to *the party’s knowledge of right and wrong, in respect to the very act with which he is charged*. If the question were to be put as to the knowledge of the

accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction; whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. *If the accused was conscious that the act was one that he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable;* and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course we think is correct, accompanied with such observations and explanations as the circumstances of each particular case may require."

Q. IV. "If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?"

A. IV. "The answer must, of course, depend on the nature of the delusion; but making the same assumption as we did before, namely, that he LABOURS UNDER SUCH PARTIAL DELUSION ONLY, AND IS NOT IN OTHER RESPECTS INSANE, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

Mr. Justice Maule only replied that his answer to the first question was applicable to this one.

Q. V. "Can a medical man, conversant with the disease of Insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial, and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime; or his opinion whether the

prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was labouring under any and what delusion at the time?"

The judges other than Mr. Justice Maule answered :

A. V. " We think the medical man under the circumstances supposed cannot, in strictness, be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide ; and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted, or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right."

Mr. Justice Maule said in answer to this question :

" Whether a question can be asked, depends, not merely on the questions of fact raised upon the Record, but on the course of the case at the time when it is proposed to ask it ; and the state of an inquiry as to the guilt of a person charged with a crime, and defended on the ground of insanity, may be such that such a question as either of those suggested is proper to be asked and answered, though the witness has never seen the person before the trial, and though he has been present and heard the witnesses ; these circumstances, of his never having seen the person before, and of his having been present at the trial, not being necessarily sufficient, as it seems to me, to exclude the lawfulness of a question which is otherwise lawful, though I will not say that an inquiry might not be in such a state as that these circumstances should have such an effect. Supposing there is nothing else in the state of the trial to make the questions suggested proper to be asked and answered, except that the witness had been present and heard the evidence, it is to be considered whether that is enough to sustain the question. On principle, it is open to the objection, that, as the opinion of the witness is founded on those conclusions of fact which he forms from the evidence, and as it does not appear what those conclusions are, it may be that the evidence he gives is on such an assumption of facts as makes it irrele-

vant to the inquiry. But such questions have been very frequently asked, and the evidence to which they are directed has been given, and has never, that I am aware of, been successfully objected to, and I think the course and practice of receiving such evidence, confirmed by the very high authority of Tindal, C. J., Williams, J., and Coleridge, J., in *R. v. MacNaughten*, who not only received it but left it as I understand to the jury without any remark derogatory from its weight, ought to be held to warrant its reception, notwithstanding the objection on principle to which it may be open.”

It does not appear that the House of Lords took any further steps after the above answers had been given. We therefore must accept them as they stand. We have not the authority of the House of Lords for saying that the one set of answers is more correct than the other.

In connection with these answers, however, several questions of no little importance arise.

In the first place,—Are the answers of any binding authority at all? If they are,—Is the authority contained in the answers of the fourteen other judges or in that of Mr. Justice Maule? Those who deny the authority of the answers say that they are no more than the academic speculation of a mere debating society. It is certainly true that instances are not wanting in which judges have felt themselves at liberty to ignore the authority of these answers in cases where they have thought right to do so. Mr. Justice Blackburn, on his own admission, did so, before 1874, in a case which will be mentioned more fully presently. Mr. Justice Cave, ten years later (in 1884), did the same in *R. v. Brocklehurst* (mentioned in *Tuke's Dictionary of Psychological Medicine*, at p. 316; and reported in the *Macclesfield Courier* of November 1st, 1884), contenting himself with asking the jury if they thought that the prisoner “was insane at the time” (*i. e.* at the time of the act charged). This question is closely connected with the next one that presents itself for consideration.

That next question is whether, even assuming that the answers of the other judges, and not those of Mr. Justice Maule, are to be taken as the authority, such answers are

exhaustive, and apply to every case of insanity that can possibly arise. It is submitted that what has already been said under the preceding head is alone sufficient to show that the answers in question cannot possibly be so regarded. They have, indeed, been treated by the judges themselves as not being so. Lord Wensleydale (who as Mr. Baron Parke had helped to prepare them) regarded them indeed as containing the whole law on the subject [see *Capital Punishment Commission* of 1875, Question 362]. But the late Lord Chief Justice, Sir Alexander Cockburn (who had been counsel in *MacNaughten's* case), clearly considered that they only express so much of the law as was necessary to answer the specific questions which had been put to the judges [see his letter on the Criminal Code Bill, printed by order of the House of Commons, June 6th, 1879]. Lord Blackburn, too, in 1874, in giving evidence before the Select Committee on the Homicide Law Amendment Bill (printed by order of the House of Commons, July 21st, 1874), admitted (see Question 276) that a case had come before him, in which he had *not* been able to apply the rules laid down by the judges in *MacNaughten's* case, and that in that case the jury had, with his approval, found the prisoner to be insane, although not so according to the rules in *MacNaughten's* case. Lord Blackburn consoled himself with the reflection that this case was "exceptional."

A further question is, whether these answers are to be regarded as final, or not. Clearly they could be altered by Act of Parliament (as indeed has been suggested). But it is not in this sense that we ask whether they are final or not; but rather whether they are to be looked upon as final, and not subject to that development which is generally incident to the growth of the Common Law. It is submitted that they emphatically cannot and ought not to be so regarded. If the answers in *MacNaughten's* case are, at best, nothing more than a *guide*, and not of binding authority, as they would be were they an actual decision of the House of Lords (which they clearly were not), then either that House, or the Court for the Consideration of Crown Cases Reserved, may, whenever they please and an appropriate opportunity arises, frame any rule for the

government of cases of insanity which they may think it advisable to lay down. No such rule has as yet been laid down; but it would be inconsistent with the whole of the history of the law of insanity (as given above), and indeed with the whole spirit of English law, to say that the growth of this branch of the law was suddenly stopped at any given point, and then became rigid and inelastic.

English law is progressive, advancing with the times. We learn on the authority of Sir Henry Hawkins [see *R. v. Ware, Shrewsbury Chronicle*, January 23rd, 1885, cited at p. 314 of *Tuke's Dictionary of Psychological Medicine*] that he was not speaking his own view only, but that of the judges generally, in expressing a wish that the whole subject might be reconsidered with a view to obtaining some better definition as to what should constitute a defence on the ground of insanity. In the authority just cited (*Tuke's Psychological Medicine*) there will be found expressions of their individual wishes to the same effect by many of our judges, including among them Lord Coleridge and the late Lord Bramwell. It has already been suggested that it is within the competency of the judges themselves, in the Court for Crown Cases Reserved, to frame such a rule or definition as they desire, without waiting for the intervention either of the House of Lords or of Parliament.

Meanwhile, an endeavour will be made to show how the existing rules of law are susceptible of a broad and liberal view. To place a right construction upon them, it is essential in the first place, to recall the circumstances under which they were stated. A political fanatic had attempted to murder the Prime Minister of the day—and had actually killed his private secretary,—thinking that the action of that Prime Minister was reprehensible and unjust. For this act, he had been put upon his trial; and one of the most rising advocates of the day (for even in 1843 Mr. Cockburn was a Q.C., and not an unknown man whose views commanded little weight) had put forward as a defence the doctrine of partial insanity, which it was the fashion in those days to term “monomania.” This doctrine was at that time quite novel, and somewhat indefinite; and many lawyers, as well as the outer world, regarded it with some mistrust. The

judges who presided at the trial had not committed themselves on the subject one way or the other, allowing the defence to pass uncriticised ; but, in their remarks to the jury, they simply put the case upon the time-honoured question whether the prisoner "at the time when the act was committed was sensible of the difference between right and wrong ;" or, as it was expressed in that trial, whether "at the time the act was committed, for the commission of which the prisoner stands charged, he had not such a competent use of his understanding as to know that he was doing, with respect to the act itself, a wicked and a wrong thing ; whether he knew that it was a wicked and a wrong thing he had done, or was not sensible at the time he committed the act that it was contrary to the laws of God and man."

It was the defence of the brilliant advocate which had (in the judgment of the public at any rate) obtained the acquittal of the prisoner. But the result of the case appeared, at that time, to be that it left principles altogether unsettled, and had not definitely decided whether Mr. Cockburn's theory of "partial insanity" could be accepted in law or not. A debate upon the case and its effects had followed in the House of Lords, but its effect had not been to quiet the public mind upon the question as to what kind or degree of insanity would entitle an accused person to an acquittal. For the Law Lords had differed among themselves. Lords Lyndhurst, Cottenham, and Campbell thought that the acquittal was right : while Lord Brougham (consistent in his sustained dislike of the doctrine of "partial insanity"—see *ante*, p. 18, *et seq.*) plainly intimated that he thought the result in *MacNaughten's case* was wrong, and that, if he had had his way, he would have hanged MacNaughten, and presumably also Hadfield, the would-be assassin of George III, and Martin, the incendiary of York Minster. His Lordship was not alone in this opinion, for some people were strenuously contending that the insane ought to be subject to punishment, if they broke the law, in spite of their mental incompetency ; and these had at their head an Archbishop, who published a pamphlet, in which he argued that you whip a dog if he steals, though others are

not deterred by his punishment, and sought literally to treat insane men in the same way as dogs in this respect.

It was under these circumstances that the judges were summoned, and it is by the light of them that their answers in *MacNaughten's case* must be construed. These questions and answers may accordingly be surmised to have been astutely framed so as, on the one hand, not to further excite alarm; and, on the other hand, neither to bring back the narrow views of bygone years as to insanity, nor to give effect to the argument that those who were mentally irresponsible ought nevertheless to be punished, and even hanged, if they committed murder.

The questions and answers, when closely looked at, appear to deal with three subjects. They state (1) the legal position of persons who commit crimes while they are under the influence of insane delusion in respect of one or more particular subjects or persons; (2) the legal position of persons who commit crimes when they are "in other respects insane;" and (3) the proper mode of examining a medical witness in cases where the issue to be tried by the jury is whether a certain person is, or was at a certain time, sane or insane. It will be best to consider each of these three subjects separately.

In the first place, the legal position of persons who commit crimes while under the influence of "insane delusion in respect of one or more particular subjects or persons," is considered by the judges in the first, second, and fourth of their answers in *MacNaughten's case*. MacNaughten's trial, and the defence which Mr. Cockburn had set up for him, had, at the moment, directed special attention to the subject of Partial Insanity. The substance of what is said in these answers, as to this subject, is that a person who commits a criminal act, under a delusion as to facts, but *who is not in other respects insane*, is entitled to an acquittal when that state of facts would, if it really existed, have justified his act. But the answers go on to say that the same person will be liable to be convicted if the state of facts would not have justified the course he took upon them. For instance, a person who is in danger of being actually killed by another, may lawfully prevent it, if there be no other way

of doing so, by taking the life of his assailant ; but if he find a burglar in his house stealing his plate, he will not be justified in shooting the burglar—his proper course being, to arrest him and hand him over to the police. Consequently, his insanity affords a defence to a person who kills another under the insane delusion that that other is at the moment about to kill him, but it is no defence to such a person if he be labouring under an insane delusion that his victim was at the moment merely about to rob him. In such a case, an arrest would have been justified, but the killing is not. In other words, it may be said that the insane are given no immunity on the state of facts supposed, which the sane, on the same state of facts, do not possess.

Few persons, indeed, exactly fall within the description of an insane person contained in the answers to these first, second, and fourth questions, as interpreted by the judges. For, in the majority of cases, the presence of delusion is but evidence (*ante*, p. 24) of the existence of an unsoundness of mind, which cannot be shown to exist only with regard to the particular subject as to which there are delusions. But, granted a case such as the first answer supposes, namely, that of a person “who labours under such partial delusions only, and is not in other respects insane” (a supposition, be it marked, which ignores all considerations of emotional disturbance or power of will, and like questions), then the answers in question appear to lay down an intelligible and reasonable rule.

The second subject, namely, the legal position of persons who commit crimes when either afflicted with delusions on several matters or “in other respects insane,” is dealt with in the answer to Questions II and III. This answer does not appear to be limited to cases in which delusions exist, but to be intended to apply to *all* cases of insanity. In it, the judges say that in *all* cases in which it is sought to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that, if he did know it, he did not know that he was doing what was wrong.

Every word of this answer to Questions II and III in *MacNaughten's case*—which is very often made the canon for deciding whether an insane person ought to be held criminally responsible or not,—requires to be most carefully weighed ; and in conjunction with it, the cases which have subsequently arisen, and illustrate it, must also be referred to by anyone desirous of studying more closely the details under consideration.

The first principle involved in this answer appears to be that there is a presumption that every person is sufficiently sane to know right from wrong, and that Criminal Responsibility lies upon every one who commits a criminal act, unless he shows (the burden of proof in this respect resting upon him) that at the time of committing the act he did not possess this knowledge [see *R. v. Higginson* (1843) ; *R. v. Burton* (1863)].

The terms in which the above principles are laid down in the cases just referred to, and also in others, are as follow. Mr. Justice Maule, just afterwards in 1843 [*R. v. Higginson* (1843)], said to the jury : “ If you are satisfied that the prisoner committed this offence, but you are also satisfied that, *at the time of committing the offence*, he was so insane that he did not know right from wrong, he should be acquitted.” The late Mr. Justice Wightman, in *R. v. Burton* (1863), said that the rule, as laid down by the judges, was “ that a man was responsible for his actions *if he knew the difference between right and wrong.*” Mr. Baron Rolfe, in another case [*R. v. Layton* (1849)], told the jury that what they had to consider was “ whether the evidence was such as to satisfy them that at the time when the act was committed the prisoner was incapable of understanding right from wrong *so that he could not appreciate the nature of the act he was committing.*” Mr. Baron Martin, in the notorious *Townley case* [*R. v. Townley* (1863)], approved a phrase previously used by Mr. Justice Le Blanc in *Bowler's case* to the effect that it was for the jury to “ distinguish whether the prisoner, when he committed the offence, was incapable of distinguishing right from wrong, or under the influence of any illusion which rendered him, at the moment, *insensible of the nature of the*

act he was about to commit; since, in that case, he would not be responsible for his conduct." It only remains to add that, though in some of the cases just referred to, the jury, in the result, came to the conclusion that, as a fact, the accused, in the particular instance before them, did know right from wrong, and therefore convicted him, this fact only shows that the offender, in each of the cases where he was thus convicted, had not succeeded in proving that he was a person of the description indicated, and does not prove that the law fails to protect a person really shown to be insane.

The "right" and the "wrong" spoken of in the phrase "knows right from wrong" are *Moral* right and wrong, and not mere legal right and wrong. Indeed, in *Lord Ferrers' case*, Mr. Solicitor-General Yorke, in the remarks which were cited with approval by Sir William Follett on the trial of MacNaughten, actually made use of the very expression "moral good and evil." Lord Brougham, indeed, in the debate in the House of Lords on *MacNaughten's case*, would certainly have confined the meaning of the expression to *Legal* right and *Legal* wrong [see *Hansard*, vol. lxvii, at pp. 730, 731]. Moreover, it has already been pointed out that a portion, though not the whole, of Chief Justice Sir James Mansfield's summing-up in *Bellingham's case*, is open to such an interpretation. But the expressions, which have been used on other occasions as equivalent to "right and wrong," are either "capable of distinguishing good from evil," or "capable of knowing what is proper," or "capable of knowing what is wicked" [see Lord Brougham's remarks in *Hansard*, *ubi sup.*]. Such expressions as these in themselves imply that something more than mere *legal* right and wrong is meant. Moreover, Hadfield, whose case has already been dealt with, certainly did know *legal* right from *legal* wrong, and committed his offence with the very object of being hanged for it, having persuaded himself that it was his moral duty to submit to have his life taken from him at the hands of the law. Again, in a part of his summing-up in *Bellingham's case*, other than that just cited, Chief Justice Sir James Mansfield himself told the

jury that the accused was only guilty if he knew his act to be a violation of "both the laws of God and Nature;" and a similar, but less happy, phrase was employed by Chief Justice Tindal on the trial of MacNaughten, the words "and of man," being substituted by him for "and Nature"—a form of expression which might (as is quietly hinted in the answer to Questions II and III in *MacNaughten's case*) possibly lead a jury to suppose that an offender could not be punished, unless he had knowledge of the actual law with respect to his crime. A conclusive reply to the suggestion that the "right and wrong" spoken of are legal right and wrong is, indeed, furnished by that answer in *MacNaughten's case* which has just been referred to. In conclusion, it may be observed that the circle of moral duties is much wider than that of legal ones, so that the interpretation here put upon "right and wrong" leaves an offender no just ground of complaint if, after having (at his peril) done that which he knows to be morally wrong, he finds (to his cost) that his act also falls within the narrower circle of legal duties, and is punishable by human law; for when he committed the act in question he admittedly was conscious that it was contrary to moral law.

Cases in which there may be a violation of moral duties, but no legal offence, can be readily imagined. For instance, it is against moral duty to slander one's neighbour by saying evil things of him; and it is wrong to be guilty of fornication. But neither of these acts is a violation of the Criminal Law of England. If, however, the slanderer of a neighbour is unwise enough to tell his falsehoods on oath, and in the course of a judicial proceeding, before a Court of Competent Jurisdiction, and upon a matter relevant to the issue that is being tried, then he does commit a breach of the law, and is guilty of the legal offence known as perjury. If the immoral man is so imprudent as to make a girl who is under sixteen the partner of his immorality, he thereby infringes the Statute Law of England, and may be punished under the Criminal Law Amendment Act.

Passing from this, at first sight, difficult, but still extremely important, principle, it is also to be noted that the "knowledge of right from wrong," which is required, must,

in point of law, exist with regard to the very act with which the accused is charged. Not only was this laid down in the judges' answer to the Questions II and III in *MacNaughten's case*, but it was also affirmed in the next year by Lord Chief Justice Tindal. The judge just mentioned said, in *R. v. Vaughan* (1844), that "it must be shown that the prisoner had no competent use of his understanding so as to know that he was doing a wrong thing in the particular act in question." The dictum last quoted is adopted in *Russell on Crimes* (vol. i, pp. 123, 124), which is considered by lawyers to be the standard law book on the subject with which it deals. It is therefore clear that a mere general or abstract knowledge on the subject is not enough, but that the knowledge must exist with regard to the particular act under consideration [see also *R. v. Higginson* (1843) ; *R. v. Vaughan* (1844) ; and 1 *Russell on Crimes*, 124]. A man may, for instance, be ready to affirm in general terms that murder is both a moral and a legal offence, but, at the same time, may think that the homicide, of which he himself has been guilty, is no murder, because he is under the delusion that his victim was, at the moment when he was killed, engaged in an attempt upon the murderer's own life [see judges' answer to fourth question in *MacNaughten's case* ; *Allison's Principles of the Law of Scotland*, p. 645] ; or that he himself is a king, and, when he killed the other, was either defending his Royal Prerogative or merely exercising it by executing an offender [see per Baron Martin in *R. v. Townley* (1863)]. An illustration of this is afforded in a case which arose in Scotland some years ago. It was there suggested that a man, who, while crossing over a common on a dark night, killed another, had committed this act under the delusion that he was destroying an evil spirit ; and it was agreed that if this delusion was proved in point of fact to have existed (which, however, it eventually was not), the accused would be entitled to acquittal on the ground of insanity.

It being necessary, to make a person responsible to the Criminal Law for any act, that he who commits such act should "know right from wrong ;" where it is found by a jury that an accused "did not know that his act would

injure any other person," this verdict amounts to a finding that the accused "did not know right from wrong," and is consequently in effect a verdict of "Not Guilty" [see *R. v. Davies* (1858)].

Again, not only must there be a knowledge on the part of an accused as to the moral character of the particular act, but it is laid down that he must be aware of the "nature and quality of the act." What is the exact meaning of this phrase is not very clear, and has been the subject of much speculation. It probably means that, to be responsible for it, a person must possess some sense of the degree and amount of moral wrong involved in an act. In other words, the mere fact that the act was, in point of mere law, technically a wrong, must not be extended in the case of an insane person (as it is in other cases), so as to totally change the moral character of the act itself. A *sane* man is reasonably taken to "intend all the consequences of his own act." For instance, if a sane man, in endeavouring to shoot a fowl, with a view to stealing it, shoots and kills the owner of it, this, in law, is murder. But if an insane person utterly destroys, as he imagines, an earthen vessel, but really destroys a man, Erskine, in defending Hadfield, argued that he ought not to be convicted of murder, because, even though in the imaginary state of facts which he supposed, he was committing a technical trespass, he had no intention of doing a thing so heinous and of such moral turpitude as murder. The view thus illustrated by Erskine certainly commends itself to good sense. Whether or not it is precisely what was meant by the expression "nature and quality of the act," it is not possible to say positively. The actual words employed would, however, be satisfied by an interpretation such as that which is here suggested. At any rate, in the Scotch case just mentioned, if the accused had (as suggested), while crossing a moor on a dark night, really killed another under the insane delusion that he was destroying an evil spirit, he would certainly have been an example of a person who did not comprehend "the nature and quality" of the act which he was committing.

Yet another principle appears to result from the answer

of the judges to Questions II and III in *MacNaughten's case*. When it is there said that the accused, to be legally guilty, must "*know* the difference between right and wrong," it is submitted that the word "*know*" ought to be taken as implying the possession of a knowledge carrying with it a power of discrimination and choice. This use of the word "*know*" is not by any means an unheard-of or a strange one, since it occurs both in the early chapters of Genesis, and also probably in the writings of Ulpian. The Bible narrative of the Fall tells us, in effect, that our First Parents, having a knowledge of good and evil, which enabled them to exercise a choice, deliberately and intentionally chose the evil course. The learned jurist Ulpian probably uses the word "*knowledge*" in a similar sense, when he defines Jurisprudence as "*justi et injusti scientia*"—the knowledge of the just and unjust,—since jurisprudence is certainly not a matter of mere knowledge, but is rather the science of the principles which underlie "the just and unjust," and distinguish them from each other. This is, indeed, shown by another passage in the writings of Ulpian himself, where the position of the Roman jurists is stated to be "*æquum ab iniquo separantes; licitum ab illicito discernentes*." In his *Oxford Lectures and other Discourses* (London, 1890), Sir Frederick Pollock (at p. 5) comments on the above passage by saying, "The *scientia* here in question is a discriminate, not a collective knowledge."

The views just expressed as to the true meaning which ought to be placed upon the word "*know*," as used by the judges in their answer to Questions II and III in *MacNaughten's case* in describing a person who "*knows* right from wrong," appear to be supported by at least one judicial utterance. The late Lord Chief Justice Denman, in *Oxford's case*, used these words:—"A person may commit a criminal act, and not be responsible. *If some contributory disease was, in truth, the acting power within him, which he could not resist, he will not be responsible*" [*R. v. Oxford* (1840)]. If the construction of the word "*know*," which is here contended for, be accepted, the English law upon this subject will be brought into harmony with that of Scotland, by which it is required that a person, to be free from Criminal

Responsibility, should have "*libertas arbitrii*." The French Code too, by Art. 64, lays down that an insane person cannot be held responsible for an act done "under the control of a force which he was not able to resist;" and it is believed that the German law is to the same effect.

It is, at any rate, clear that epilepsy, by which the power of discrimination is taken away, discharges a person from Criminal Responsibility, even in the present state of English law. Epilepsy, as we have remarked [*ante*, p. 8], has a strong tendency to develop insanity. It is, in modern days, always accepted as affording a defence, if only it be proved that the act with which an accused is charged was really prompted by an epileptic impulse. We have seen that, in *Bowler's case*, early in the century (1812), the jury, "after considerable deliberation," came to the conclusion that in that particular instance it had not been established, in point of fact, that the accused, when he committed the offence, was suffering from such an attack of epilepsy as would render him unconscious or irresponsible. But the case is no authority whatever for saying that epilepsy, if proved to have dominated and caused the act, is no defence. Indeed, "masked epilepsy" [see *ante*, p. 8], which occurs where there are sudden paroxysms of violence without a distinct epileptic seizure, has, it is believed, been accepted as a defence—though its existence is required to be fully proved. Moreover, not only is it recognised that an act committed under the influence of epilepsy cannot be regarded as criminal, but a similar indulgence is accorded to acts committed under the influence of puerperal insanity—which in some cases is, no doubt, of long duration or even may be permanent, but is in many cases no more than transitory [see *R. v. Law* (1862)]. Here then are at least two cases in which those who think that English law will not recognise "irresistible impulse" as a defence must admit that their contention cannot be supported.

How far acts committed by persons under the influence of delusions can be made the subjects of Criminal Responsibility on the part of their authors is a question about which the law is perhaps not so plain as might be desired. It is submitted, however, that, at all events, any delusion which is so powerful

as to take away from a man the power of *choice* between right and wrong (or "good and evil"), and to coerce him into doing an act which he knows to be wrong, will absolve him from Criminal Responsibility. An example of this is presented by the case of the incendiary of York Minster [*R. v. Martin* (1829)], where the accused was haunted (as he imagined) by spirits which peremptorily commanded him to commit the act with which he was charged. Guided by this case, let us imagine a man having a delusion that he hears a voice commanding him, under pain of some immediate and dire punishment, to kill another; he obeys the voice, although he is all the time aware that his act is one for which he will be punished, if detected. Accordingly, he, with great astuteness (madmen are proverbially cunning), makes away with the body of his victim, and craftily conceals all evidences of his act. Though no decision in our law books exactly fits such a case (though the above-mentioned case of *R. v. Martin* perhaps goes further) a man answering such a description certainly ought, on principle, to be acquitted on the ground of insanity.

The result of the consideration given in *MacNaughten's case* to the position of persons who commit crimes, when they are not merely suffering from delusions, but are "in other respects insane," appears to have established five propositions, which may be summarised as follows:—(1) Every person is guilty, if he commits a crime when possessed of a knowledge of right and wrong, and such a knowledge will always be *presumed* to exist. (2) The knowledge thus possessed must be a knowledge of the distinction between *moral* (not merely legal) right and wrong. (3) Such knowledge must, moreover, exist with regard to the *particular act* with which the accused is charged. (4) It must embrace a comprehension of the "nature and quality" of such act; and (5) it must be such knowledge as to carry with it a power of choice and discrimination.

It must, however, be observed, before concluding the consideration of the second subject treated in *MacNaughten's case*, that there are certain matters connected with it which have led the majority of medical men, as well as some lawyers of experience, to look upon the rules of law with

regard to the Criminal Responsibility of the Insane as narrow and worthy of severe and hostile criticism. It is feared, indeed, that, in the controversy which has arisen on these matters between the medical and legal professions—to use the words of the late Mr. Justice Stephen (*History of the Criminal Law*, vol. ii, p. 124)—“Many things have been said which would have been better left unsaid ;” and it is thought, with the same writer (*ibid.*, at p. 128), that “in dealing with matters so obscure and difficult, the two great professions of Law and Medicine ought rather to feel for each other’s difficulties than to speak harshly of each other’s shortcomings.”

The first of the debatable subjects referred to is whether insanity without delusions affords an excuse from Criminal Responsibility. An idea is prevalent in some quarters that it is a rigid rule of law that no insanity will excuse the commission of a crime, unless such insanity be accompanied by delusions. But this, it is contended, is emphatically *not* the law. It has been pointed out in the introductory chapter to this work (*ante*, pp. 24, 25) that, while the presence of insane delusions is a certain proof of the existence of insanity, nevertheless insanity may exist without them. This, when the decisions are closely looked at, appears to be in truth the exact view taken by English law. Neither the first and fourth questions in *MacNaughten’s case* nor the answers to them will, if carefully read, be seen to contain anything inconsistent with this view. They, indeed, suppose, as a fact, the case of a man who is affected with delusions, but it will be seen that they are not so worded as to suggest that there *can* be no other form of insanity. Indeed, the answers of the judges to Questions I and III, in that case, rather appear to suggest that other forms can exist, inasmuch as that answer expressly deals (without limitation or qualification of any sort) with the case of persons who are “in other respects insane.” Moreover, it has already been pointed out that, in any view (and even assuming their authority to be binding), the answers in *MacNaughten’s case* are not exhaustive. Again, judges who have dealt with the subject since *MacNaughten’s case* have never said that there *can* be no insanity without delusions, though they have pointed out the *extreme difficulty* of proving such insanity.

Thus Mr. Baron Rolfe, in the case of *R. v. Stokes* (1848) made some remarks which appear to simply be to the effect just stated. Mr. Baron Parke, in another case in the same year [*R. v. Barton* (1848)], said that “it was difficult to see how they could establish the plea of insanity in a case where there was a total absence of delusions.” Mr. Justice Wightman, in yet another case [*R. v. Burton* (1863)], on the defence of insanity being set up for a prisoner, asked, indeed, “what delusions the prisoner was under;” and, though he used the expression that an attempt to commit suicide “might show a morbid state of mind, but not delusions,” the context shows that he was dealing only with certain facts of the case which had been asserted to be evidence of insanity, and had no intention in what he said to lay down a general rule of law to the effect that there could be no insanity without delusions. The remarks made by Mr. Baron Martin in the *Townley case* [*R. v. Townley* (1863)] are open to a similar explanation. Indeed, both the judges last named were careful, after using the expressions cited above, to ask the jury in terms in each case whether the accused was, at the time of the act, “labouring under any kind of *insanity*” obliterating the distinction between right and wrong. The words of Mr. Justice Wightman (in *R. v. Burton*) were as follow:—“The question for the jury is whether the prisoner, at the time he committed the act, was labouring under such a species of *insanity* as to be unaware of the nature, the character, or the consequences of the act he committed; in other words, whether he was incapable of knowing that what he did was wrong.” Mr. Baron Martin [in *R. v. Townley*], indeed, told the jury that the question for them was, “Was the prisoner insane, and did he do the act *under a delusion*, believing it to be other than it was?” But these words of Mr. Baron Martin may probably also be explained by the supposition that he was only dealing with *the facts of that particular case*, and that, in his view of such facts, the prisoner could only establish his “insanity” (he uses the very term, it will be noted) by getting the jury to believe that he really entertained, and had been actuated by, certain delusions as to a conspiracy, which were said in the course of the trial to have possessed him.

The words of Mr. Baron Martin, which have just been quoted, and a side-note by the editor in the fifth edition of *Russell on Crimes* (1877), are the only legal authorities for the proposition that, in point of law, no insanity which is not accompanied by delusions will excuse a crime. It is submitted that these authorities—in the one case the dictum of a Judge of Assize, delivered during a protracted trial, and certainly without previous consultation with any of his brother Judges; in the other, a mere side-note purporting to indicate their import—are not in themselves, and standing alone, sufficient to establish a rule of law which certainly does not meet with the approval of the bulk of the medical profession. Such, however, are the authorities usually relied upon for the proposition that insanity without delusions affords no excuse. But the actual language of the judges, when closely looked at, can apparently be read as simply saying that insanity, when it is not evidenced by delusions, is extremely hard to prove; and that, in each of the cases under consideration, it was, *as a fact*, and having regard to all the surrounding circumstances, impossible to come to the conclusion that, in those cases, insanity had been proved to exist. If this be the true view, then the cases referred to no more afford an authority for saying of any particular kind of insanity (whether it be prefaced by the word “moral,” or any other adjective), that it affords in law no excuse, than the case of *Bowler* [*ante*, p. 187] is an authority for saying that epilepsy, *though proved*, is no ground for an acquittal in a criminal case. For these reasons, the question whether insanity without delusions will excuse from legal responsibility appears open to, as it is certainly worthy of, further and more careful consideration.

The second of those subjects in connection with *MacNaughten's case*, which have already been referred to as giving rise to controversy, is comprised in the terms “Moral Insanity” and “Irresistible Impulse.”

The introductory chapter to this work contains [*ante*, p. 7] some remarks with regard to this subject. Consequently no further general explanation of its import need be offered here. A person who has no moral sense to tell him that he is doing that which is wrong would, *primâ facie* and

in principle, appear to fall within the exact terms of *Mac-Naughten's case*, as being one who does not "know" the difference between right and wrong, with regard to that particular act. Nevertheless, it is broadly stated by the writers of text-books that English law does not recognise moral insanity as any excuse for crime. Thus a general statement to this effect is (as we have seen in the introductory chapter) made in *Pope on Lunacy* (p. 9 of 2nd edit.); but neither Pope nor his editor cite any satisfactory authorities or decisions in support of the proposition thus enunciated in sweeping general terms. *Russell on Crimes*, which has already been stated to be the leading authority on English Criminal Law, does not contain any such sweeping general statements to the same effect as that to which we have just referred, but only cautiously says in the propositions of law which are suggested in side-notes by its author, first, that "the insanity must be such that the accused did not know whether his act was right or wrong [vol. i, pp. 126, 127] ; secondly, that "the apparent absence of motive is no reason for referring an irresistible and insane motive" [vol. i, p. 130] ; and thirdly (this, indeed, appearing to be no more than a restatement in other language of the proposition first cited), that "the question is whether the accused was so far incapable of knowing right from wrong, as to be unable to *appreciate the nature* of the act he was committing" (p. 131). All the propositions thus stated in *Russell on Crimes* are consistent with the contention that "moral insanity" is none the less "insanity" because it is prefaced by the word "moral," and is not evidenced by the existence of delusions. We thus are driven back to the broad question which has been previously stated in the course of the present observations, namely, whether English law recognises, as an excuse for an act which would otherwise be a crime, an insanity which is positively proved in other ways than by its being shown that the patient has delusions. And the grounds for contending that it may and ought to be recognised have already been stated.

An "irresistible impulse" is sometimes the offspring of "moral insanity." It is, indeed, easy to see that a person

who does not feel any moral restraint in any given direction, because he has no moral sense, will most probably act on the desires, or impulses, of the moment. This will drive us back to the old question—Has sufficient evidence in point of fact been given to afford proof of the existence of actual insanity? To prove insanity under such circumstances will, without doubt, be very difficult indeed. The cases of *R. v. Burton* (1863) and *R. v. Townley* (1863), to which reference has been made previously, are usually cited as laying down the broad general proposition of *Law* that moral insanity affords no defence; but it has already been remarked that they are susceptible of the explanation that all they really show is that in each of those particular cases there was no sufficient proof of “insanity.”

Two other cases, namely *R. v. Haynes* (1859) and *R. v. Brough* (1854), which are also generally supposed to be authorities for the same proposition, appear to be open to the same interpretation. If this explanation be accepted, it follows that English law has done no more than to affirm the difficulty of proof in such cases (which is obvious), and to say that “insanity” was not shown by the evidence of it which was offered in the cases in question; it has never, in fact, said that even if an insanity be proved, which is unaccompanied by delusions and only “moral,” it will afford no excuse for crime. Indeed, so far as “irresistible impulses” are concerned, further argument in support of the contention that, *when due to disease* (in other words, to insanity), the acts prompted by them are not criminally punishable is afforded by the following considerations. The word “know,” as we have seen, implies something beyond a mere bare knowledge, importing something that carries with it a power of choice which has neither been altogether taken away, nor even seriously impaired, by mental disease. Moreover, authority in support of this contention is not wholly wanting. For, in the words of one of our present judges,* “the responsibility of an accused person may

* Wright, J., in *R. v. Greatrex ex relatione* G. Fielding Blandford, Esq., M.D., Warwick Assizes, 28th July, 1892 [see *Journal of Mental Science*, October, 1892]. The prisoner was a youth indicted for the murder of his father.

depend upon the answer which must be given to the question, "Could he help it?"

The existence of the supposed doctrines of English law, that insanity without delusions, moral insanity, and irresistible impulses respectively, afford no defence, are, it is thought, at least still open to argument, and it is hoped that either an enlightened Legislature, or a humane Court of Criminal Appeal, will ere long declare that such doctrines of law cannot be recognised. At any rate the existence of such doctrines cannot be said to necessarily spring from the principles stated in *MacNaughten's case*—the scapegoat which has commonly been charged with all the sins of commission and omission to be found in the English law as to insanity.

If the construction of *MacNaughten's case* which is above contended for be accepted, the answers which the judges gave in that case can neither be said to have suddenly arrested the growth and development of English law, nor to have rendered it impossible for it to admit as a defence in criminal cases insanity without delusions, moral insanity, or irresistible impulses resulting from moral insanity.*

The reader must, however, be distinctly and very plainly warned that the broad and benign construction which it has been here sought to place upon the rules laid down in *MacNaughten's case* has, as a whole, never yet received the support of any reported decision.† Indeed, up to the present time the aspect of the controversy between lawyers and medical men as to the extent of the criminal responsibility of the insane has simply been that lawyers as a body doggedly stand by the apparent letter of the rules laid down by the majority of the judges in *MacNaughten's case*; while, on the other hand, medical men, almost without exception, assail those rules with more or less vehemence as being utterly obsolete, and out of accord with our present knowledge of mental science; besides being in themselves practically unintelligible to the juries which they are supposed to guide.

* It has already been pointed out that even in its present condition English law does recognise the "irresistible impulses" of epilepsy and of puerperal insanity as affording a defence.

† Yet some authority for it exists, as shown *ante*, p. 213, *et seq.*

Probably the truth in this matter lies somewhere midway between the two extremes. Lawyers are right when they say that the maxim that, to render a man responsible to the Criminal Law, he must "know right from wrong" is a very old one. Medical men are right in contending that the maxim has, in each age, been construed according to the sentiments and knowledge of that day: that it received in the fourteenth century a very different construction from that placed upon it in more recent times, and that even the comparatively modern ruling of Mr. Justice Tracy in the eighteenth century to the effect that an insane person is not to be acquitted "unless he doth not know what he is doing any more than an infant, a brute, or a wild beast," is a doctrine which could hardly be contended for in the present age even by the most strenuous defenders of the rules in *MacNaughten's case*. But medical men should neither blindly run a tilt at the old legal principle that a knowledge of right from wrong is the ultimate test of responsibility, nor can they reasonably hope to get it altogether eliminated from English law; nor should lawyers, for their part, insist too rigidly upon a literal construction of their time-honoured *formula* without making some attempt to so construe it as to make it meet the spirit and knowledge of the particular age in which it is sought to apply it.

Medical men have, however, long clamoured urgently for some simple rule to be framed by means either of legislation, or of some further questions to the judges by the House of Lords, or by means of a decision on the subject by the Court for the Consideration of Crown Cases Reserved in some test case purposely brought before it, with a view to obtaining a discussion of the whole subject before that tribunal. The latter mode of obtaining a fresh discussion of the entire matter would appear to be on the whole the most practicable and promising. In these days, Acts of Parliament on controversial subjects can only be passed when they deal with some burning political question of the day, about which each of the two great Parliamentary parties chances to be interested for the moment. Again, the privilege, which the House of Lords possesses, of consulting the judges on an abstract question is one which

that House has not now used for many a day—indeed, *MacNaughten's case* itself, in 1843, was the last instance of its exercise. It is at least doubtful whether the Lords would care to provoke the outcry and jealousy which would certainly be called forth by the revival of the exercise of a long disused privilege. Moreover the House, when it has put a question, is unable to compel the judges to give any specific reply to it. A good example of this want of power is afforded by the answers given by Mr. Justice Maule in *MacNaughten's case*, when he said that in cases raising questions as to the Criminal Responsibility of the Insane “there are no terms which the judge is by law required to use. They should not be inconsistent with the law, . . . but should be such as, in the discretion of the judge, are proper to assist the jury in coming to a right conclusion as to the guilt of the accused.” Further, in 1843 no Court for the Consideration of Crown Cases Reserved was in existence; but now that there is such a Court, the judges might well tell the House of Lords, in answer to questions on the subject, that they could not answer questions as to matters which might in due course come before them for decision in that Court.

At first sight it would appear to be but reasonable that those, who decline to accept as conclusive the rules laid down in *MacNaughten's case*, should themselves suggest in substitution for them some other and better rules which would be such as to command general approbation. Any attempt, however, to define exactly the limits of sanity and insanity, and to fix the precise border between mental light and darkness, would be (to use a familiar illustration) as vain as an endeavour by an ordinary observer to define the bounds of twilight, and to state with exactness the precise moment at which physical light ends and darkness begins. There is in truth no exact line. A little reflection, too, will be enough to show that the very making of a demand for any such line is in itself to beg the question as to the entire difficulty. The demand presupposes it to be practically possible to frame a rule defining the line. An endeavour, however, has been made to show that any attempt so to do is to undertake an impossible task. This

conclusion by no means rests on the unsupported opinion of the present writers. Mr. Justice Maule, who was said by the late Lord Coleridge (*Contemporary Review*, June, 1890) to have possessed the most extraordinary intellect of any man whom he had ever met, arrived at the same result in *MacNaughten's case*, and set his face against the attempt to define the undefinable and to set precise limits to the boundaries of sanity and insanity by any strict and rigid rules of definition (see Maule, J.'s, answers to Questions I and III). It will, moreover, be seen on reference to the able article by Dr. Orange on the "Criminal Responsibility of the Insane" (which has been already more than once alluded to) in *Tuke's Psychological Dictionary*, that many of the most eminent and experienced amongst modern judges have, on various occasions, declined to hold themselves bound by the terms of the rules laid down in *MacNaughten's case*. It will also be noticed that they all, with an unanimity which can scarcely be accidental, have abstained from ever committing themselves to any suggestion of an attempt to lay down a precise rule for the future ascertainment of the Criminal Responsibility of the Insane.

Other ingenious persons have, indeed, more than once suggested tests by which such responsibility is to be measured. Every one of these proposed tests will, however, be found wanting if carefully examined. Some of them are too broad and general; while others are too narrow to be capable of general application. For instance, Dr. Weatherly, at the meeting of the British Medical Association at Bristol in 1894, suggested that every person who is "certifiably insane" should be held exempt from Criminal Responsibility. But this proposed test is far too broad. For it would render legally absolute that immunity which persons who are subject to the Lunacy Laws are often only too prone to boast that they practically possess already (though in theory of strict law it does not at present belong to them), besides otherwise opening a wide door to considerable abuses.

Others of the proposed tests are, again, only such as to suit individual cases, and are not suitable for general application. Thus (and the case has actually occurred in practice), a man of great ability in his profession (an artistic one) is

necessarily and properly placed under restraint in an asylum. While there, though the asylum discipline over him is still absolutely essential, he becomes so well that he actually pursues his profession ; and after a little while he naturally grows impatient of the restraint imposed upon him ; he thereupon makes two very clever attempts to burn the asylum down by stuffing a grand piano with paper and then setting fire to it ; and when, on a subsequent inquiry about his mental condition, instituted with a view to getting him found lunatic by inquisition, he is questioned as to these acts, he replies : “ I wanted to test the doctor ; I am sure that he really thinks I am not mad ; if he prosecuted me for arson, he would prove that I am right ; if he did not do so, I should at all events go unpunished.” Yet can there be a reasonable doubt that such a man, whose object might have been obtained by at most firing the doctor’s haystack, but who thoughtlessly and heedlessly imperilled hundreds of other lives, was (as he was found to be) an insane person ? He had lost all sense of proportion ; and it will be recollected [see *ante*, p. 30] that the late Dr. Cullen described insanity as a disorder of the power of comparison or judgment—a test which would have met perfectly the individual case detailed above, but which was conclusively shown by the late Dr. Conolly to be imperfect and insufficient as a general definition.

Such are shortly the conclusions to which the authors have been driven after much independent study of the subject on their own part, and after provoking a discussion on it in *The Times* * (in which one of their number took an active part), in the hope that such a discussion might possibly lead to the suggestion of some short and useful formula that would in future constitute a rule on the matter.

All that has been said in the preceding pages of this chapter as to the law with respect to the Criminal Responsibility of the Insane, and upon the question whether it is practically possible to frame any formula which shall at once be satisfactory, exhaustive, and final, may be shortly summed up as follows :

Persons shown to be suffering from delusions alone, but

* See *Times*, 25th August, 1894, to 17th October, 1894.

from no other form of insanity (such persons are, to say the least, seldom met with), are placed by the law in exactly the same position as that which they would occupy if the imaginary state of things which the delusion makes them suppose to exist, really did exist. Persons who, besides suffering from delusions, are in other respects insane, are *primâ facie* presumed to possess a knowledge of right and wrong; yet nevertheless are not criminally responsible if it can be shown that at the moment when the act with which they are charged was committed, they did not know right from wrong as to that particular act, and were not aware of either the moral nature and quality of that act, or whether it was morally right or wrong. When it is said that one who did not "know right from wrong" is entitled to be acquitted, it is meant that an accused to be responsible must possess not merely an abstract knowledge on the subject, but also that power of choice and discrimination about it which is usually conferred by all knowledge. In cases where it is shown that in consequence of disease such a discriminating power was wanting, it may at least be *argued* that a defence is afforded by an insanity which was merely "moral insanity," or which took the form of an "irresistible impulse" (this meaning an impulse which could not be resisted, as distinguished from one which merely was not resisted). Though, however, the above general principles thus briefly stated appear to be the chief of those by which the law is governed, it is not possible to frame any compendious universal formula in which all the rules of law with regard to the Criminal Responsibility of the Insane can be adequately expressed.

Notwithstanding that it is thus thought impossible to suggest any test which will, in law, be alike rigid, exhaustive of every question that can possibly arise in practice, and absolutely final, the present state of the English law as to the Criminal Responsibility of the Insane may, perhaps, be stated in a sentence, with sufficient precision to meet the great generality of cases. It is, with some diffidence, suggested that the English law on this subject, as contained in *MacNaughten's case*, when read by the light of the decisions both prior and subsequent to it, is, at this particular instant, as follows:—A person is not criminally responsible for an act done at a

moment when mental disease prevented that person either from discriminating between moral right and wrong, so far as regards such act, or from appreciating the moral nature and description of the act itself.

With these observations we must now bring to a close our remarks as to the *principles* of the law governing the Criminal Responsibility of the Insane, and as to the form of the rule or rules expressing those principles.

Before, however, concluding the present chapter as to the law and practice regulating questions of the Criminal Responsibility of insane persons, it is necessary to notice a few questions of practice which are of considerable importance.

The first of these questions of practice is as to the materials which a medical man should possess before forming an opinion upon the mental condition of an accused person, and as to the terms in which he should express it when formed.

It has already been pointed out that a medical witness ought always to be careful to confine any expression of opinion on his part to the simple question of what was the mental condition of the accused at the time when the act under consideration was committed. The question which we have now to consider is as to the form in which this opinion, which he may legitimately express, should be stated, and as to the materials which the witness ought to possess on the subject. In MacNaughten's trial, his counsel, as may be recalled, was allowed to call Mr. Forbes Winslow—a specialist in insanity—and ask him whether, having been in Court during the trial, and heard the whole of the evidence, he considered the prisoner sane or insane.

Now this mode of eliciting the opinion of a medical witness is objectionable, both for technical reasons and on grounds of good sense. Technically it is a well-established rule of law that a witness cannot be asked to give his opinion on the very question which forms the issue to be decided by the jury. Thus, to take a familiar instance, on a trial arising out of the collision between two vehicles (known by lawyers as a "running-down case") a witness cannot be asked, "Whose fault do you think it was?" Though if he be experienced in driving, some such questions as the following *may* properly be put: "If defendant pulled his off rein

(as it has been said that he did) what would have been the effect?" Grounds of common sense tell us that to ask any witness (scientific or otherwise) the very question which the jury have to try, is to displace him from his proper functions as a witness, and to place upon him the duties of a jurymen; or, as it has been said, to "take him out of the witness-box and put him into the jury-box." Nevertheless Chief Justice Tindal and his two brother judges had allowed the objectionable course just indicated to be followed in *MacNaughten's* trial, and some authority in support of it was derived from this. Indeed, Mr. Justice Maule, it will have been seen, says (perhaps sarcastically) that he concludes from this that this mode of examination *must* be the proper one. All the other judges, however, including the three who had presided at MacNaughten's trial, agreed in saying that the proper kind of question is one in a hypothetical form, and asking, "Assuming so-and-so, then what is your opinion, &c.?" This, it will be noted, leaves the jury to determine whether they will or will not accept the facts assumed by the question.

The following points will also be found by medical witnesses to be in many cases of practical importance.

If hereditary insanity is set up as a defence, the fact that certain persons were blood relatives of the accused ought first to be shown, and *after* this, proof that such persons were insane becomes relevant and admissible.

Stronger proof of insanity is required in cases where a *motive* is shown on the prisoner's part for the commission of the act charged against him than is necessary in other cases. Thus, in a Scotch case where a man was charged with horse stealing, it was proved that the accused had stolen the horse in the night, had ridden it by an unfrequented road straight to an out-of-the-way place, where he had sold it: meanwhile conducting himself rationally about the whole transaction. Thus the motive of gain being apparent, it is said that the defence of insanity was "overruled" [see *R. v. Henderson*, cited Alison, *Princip. Crim. Law of Scotland*, at pp. 655, 656]. This principle applies with some force in cases where the form of insanity relied upon is imbecility or weak-mindedness. For example, a

certain "poor half-witted fellow" had, during the French war, enlisted as a soldier, and to the great surprise of his neighbours was accepted by the authorities as a recruit for, and duly passed into, the English army. In the course of time he was taken prisoner by the enemy, and subsequently, while still a prisoner of war, enlisted as a recruit in their army. Having been retaken by the English, he was prosecuted in England for "adhering to the King's enemies." In defence of his conduct reliance was placed on his notorious weakness of intellect; but it was proved by the prosecution in reply that the accused had been heard to account for his conduct by remarking that it was much more agreeable to be at liberty and to have plenty of money than to remain confined in a dungeon. He was found guilty of the charge laid against him—a result which is obviously accounted for by the fact that the above conversation showed that, though perhaps somewhat deficient in foresight, he was of sufficient intelligence to be guided by an easily understood motive [see *R. v. Parker* (1812)].

When the defence of insanity is set up, it is not necessary actually to prove that the accused was insane at the precise moment when the offence was committed, but it will usually be sufficient to show that he was insane immediately before the time of the commission of the act for which he is indicted; thus enabling the jury to draw the inference that the insanity still existed at the moment of such act. This, however, will be insufficient when circumstances are proved which render it probable that the accused had recovered his senses at the moment of the commission of the act [see per Lord Chief Justice Kenyon in *R. v. Hadfield* (1800)]. Accordingly in the case just cited it will be recollected that the accused had shot at King George III at Drury Lane Theatre in the year 1800. On proof that the prisoner had been severely wounded in battle seven years previously; that ever since then he had, at stated periods of the year, been out of his mind; that he had been confined in a lunatic asylum, and that he had displayed violent and eccentric conduct both on the day previous to and during part of the day itself on which the act was committed, he was acquitted, notwithstanding that he had spoken and

acted in a reasonable way both immediately before and after the commission of the act.

The burden of proving insanity, when it is set up as a defence, lies upon those who allege its existence. To say the least, a man going about the world managing, dealing, and acting as if he were sane must, as it has been well expressed by Mr. Baron Rolfe [in *R. v. Layton* (1849)], be presumed to be so. Consequently, if the evidence is so evenly balanced as to leave the question in doubt, the principle that in criminal cases every man is taken to be sane till the contrary is proved comes in, and the jury ought to convict the accused [see *Russell on Crimes*, pp. 124, 125 ; *R. v. Stokes* (1848)].

At the same time, it is not necessary in *every* case in which insanity is alleged that it should be established by the actual sworn evidence of witnesses. A jury may use their eyes and other senses, and may act upon the evidence of such senses in finding a man insane, whenever it is apparent by his demeanour in Court that he really is so, though no one has formally proved it [see *R. v. Goode* (1837), 7 *A. and E.*, 536 ; *R. v. Davies* (1853)].

But though a jury may use their senses, the use of them must be directed to the acts and conduct of the prisoner himself. Counsel may not read to them in his address extracts from medical works. He may, however, read a passage from a book, saying before he does so something to such an effect as "My argument is as follows ;" but it is questionable whether he has in strict law any right to state by whom the book was written. A scientific witness may, however, say with propriety, "So-and-so is a writer of repute in my profession, and I agree with what he says in the following passage, and adopt it as my own opinion ;" and then proceed to read the passage.

The form of the verdict to be given by a jury in cases where the defence of insanity is set up, has in modern times been made different from what it was under the old law contained in the Act [39 and 40 Geo. III, c. 94] which we have seen was passed in 1800 directly after Hadfield's attempt on George III in Drury Lane Theatre. For, by "The Trial of Lunatics Act, 1883" [46 and 47 Vict., c. 38],

the earlier Act is repealed, and the accused is no longer "acquitted" on the ground of insanity as the common phrase went; but the jury, instead of finding a special verdict as to whether, at the time of the act charged, the accused was insane, according to the terms of the old Act, must now say, first, whether the accused committed the act or omission charged; and secondly (if they find that he did) whether he was at that time sane or insane. In the event of their finding that the accused is guilty and insane, he may "be kept in custody as a criminal lunatic," and is placed under care and detained in a criminal lunatic asylum [*ante*, p. 170], from which he can only be discharged by an order of a Secretary of State—in practice, always the Home Secretary.

The Act also gives such Secretary of State power to attach any conditions he may please to the order of discharge [47 and 48 Vict., c. 64, s. 5].

It will be noted that the Act of 1883 emphasises the old law under which it was necessary that a jury, before they acquitted an accused on the ground of insanity, should be satisfied that an act which would have amounted to a crime if done by a sane person, had really been committed by the accused. For instance, a prisoner who is indicted for shooting at a person with a pistol *loaded with powder and shot* cannot be found guilty unless the jury are satisfied that the pistol had some missile in it, since, unless this be shown, no offence has been proved [see *Oxford's case* (1840)].

Our discussion of the law and practice as to the defence of insanity in criminal cases is now complete.

As supplementary to this subject it may, however, be useful to add a few remarks as to how far drunkenness affords a defence in criminal cases. For this question is one which a medical man may not improbably be called upon to consider.

Drunkenness, while it lasts, may almost be said to be a sort of insanity. But voluntary drunkenness (it is commonly said) is no excuse for crime.*

* Upon this subject the celebrated Dr. Paley observes as follows:

"It is a question how far drunkenness is an excuse for the crimes which a drunken person commits. In the solution of the question, we will first suppose

Accordingly a case is on record where a man who committed two murders and a rape under the influence of drink was condemned and executed for these offences [see *R. v. Dey*]. Even a man who, owing to previous injuries, is unduly excited by a small quantity of drink, has been said to be responsible if he takes that small quantity and is thereby betrayed into the commission of criminal acts [33 *Parr's Med. Jur.*, at p. 140].

The fact that an accused was drunk at the time when the drunken person to be altogether deprived of moral agency, that is to say, of all reflection and foresight. In this condition, it is evident he is no more capable of guilt than a madman, although like him he may be extremely mischievous.

"The only guilt with which he is chargeable was incurred at the time when he voluntarily brought himself into this situation; and as every man is responsible for the consequences which he foresaw, or might have foreseen, and for no other, this guilt will be in proportion to the probability of such consequences ensuing. From which principle results the following rule, viz. that the guilt of any action in a drunken man bears the same proportion to the guilt of the like action in a sober man, that the probability of its being the consequence of drunkenness bears to absolute certainty.

"By virtue of this rule, those vices, which are the known effects of drunkenness, either in general or upon particular constitutions, are in all, or in men of such constitutions, nearly as criminal as if committed with all their faculties about them.

"If the privation of reason be only partial, the guilt will be of a fixed nature; for so much of this self-government as the drunkard retains, he is as responsible then as at any other time. He is entitled to no abatement beyond the strict proportion in which his moral faculties are impaired.

"Now, I call the guilt of the crime, if a sober man had committed it, the whole guilt. A person in the condition we describe incurs part of this at the instant of perpetration; and by bringing himself into such a condition, he incurred that fraction of the remaining part, which the danger of this consequence was of an integral certainty. For the sake of illustration, we are at liberty to suppose that a man loses half his moral faculties by drunkenness; this leaving him but half his responsibility, he incurs, when he commits the action, half of the whole guilt.

"We will also suppose that it was known beforehand that it was an even chance, or half a certainty, that the crime would follow his getting drunk.

"This makes him chargeable with half the remainder; so that altogether he is responsible in three fourths of the guilt which a sober man would have incurred by the same action.

"I do not mean that any real case can be reduced to numbers, or the calculation be ever made with arithmetical precision; but these are the principles, and this the rule, by which our general admeasurement of the guilt of such offences should be regulated" (*Moral Philosophy*, b. 4, c. 2).

act with which he is charged was committed can, however, be taken into consideration in cases where it becomes a question whether what the law regards as sufficient provocation has or has not been given. For a man who is drunk may be more easily excited to anger than one who is sober [see Parke, B., in *R. v. Thomas* (1837); Park, J., in *Pearson's case* (1835)]; and so also an accused might be really more likely to apprehend attacks upon his person or property, if drunk, than if sober [Park, J., in *Marshall's case* (1830); Parke, J., in *Goodier's case* (1830); *Gamlen's case* (1858)], and this is therefore a question which ought to be left to the jury for decision. Moreover, in cases where the actual intent with which an act was done is a material ingredient in the constitution of a crime, it would appear that the fact that the accused was drunk at the time may afford a defence. For, as the late Chief Justice Jarvis pointedly remarked, "If the prisoner was so drunk as not to know what he was about, how can you say that he *intended* to do any given act?" The late Mr. Justice Coleridge and the late Mr. Justice Patteson also expressed somewhat similar views [*R. v. Cruse* (1838)].

On similar principles, the question whether the speaker was drunk or sober when he used them, is material when a question arises as to the intent with which words were spoken; since, if he were drunk, they would be more likely to have been words of mere vulgar abuse. But in cases where constructive mischief, or "*malice in law*," as it is called, must be inferred from an act (as *e. g.* from the use of a deadly weapon), the fact that the person who used it was drunk at the time affords no defence, at any rate when the charge is murder [see the decision of the late Mr. Justice Park, consulting Mr. Justice Littledale, in a case of *R. v. Carroll* (1838), differing from a previous decision of Mr. Justice Holroyd in *R. v. Grindley* (1819) cited in *Russell on Crimes*, p. 115, note] or is one of maliciously wounding [*R. v. Meakin* (1836)]. In cases where, on the above principles, the actual *intent* is material, it ought to be left to the jury to say whether the accused was or was not so drunk as not to be capable of forming any intention at all, and if they think that he could not, they may acquit him [see *R. v.*

Cruse (1838) ; *R. v. Monkhouse* (1849) ; *R. v. Thomas* (1837) ; see also *Roscoe's Criminal Evidence*, 10th edit., pp. 735, 736]. But though the law as to voluntary drunkenness is as above stated, yet "if a person by the unskilfulness of his physician or by the contrivance of his enemies, eat or drink such things as cause frenzy, he is excused [see 1 *Hale, P. C.*, 32, as cited 1 *Russell on Crimes* at p. 114].

Moreover, if in any case drunkenness has given rise to *actual* insanity [see 1 *Hale, P. C.*, 32] or to *delirium tremens* [see per Stephen, J., in *R. v. Davis* (1881)], an act done by an accused while in such a state is not punishable, even though such mental condition has been brought about by the voluntary vice (*e. g.* persistence in excessive drinking) of the accused himself.

PART IV



CAPACITY

PART IV.—CAPACITY

PRELIMINARY REMARKS

IN this division of the subject it is proposed to consider two matters which frequently give rise to questions with respect to insane persons, namely, whether, in the first place, such persons are capable of giving evidence in a court of law ; and secondly, whether they are, or were while living, capable of making a testamentary disposition of their property.

The former of these two questions can, of course, arise only during the lifetime of the patient. It is dealt with in Chapter I. The latter question may, however, be asked not only during the life of the sufferer, when the question whether he is of sufficient capacity to make a will may be discussed by his friends, but also after his death, should a dispute have arisen with regard to any will he may have made in his lifetime, or where the advisability of disputing such a will is being canvassed. The subject of Testamentary Capacity generally is considered in Chapter II, and it is hoped that what is there set out may prove useful as a practical guide to medical men, as well when they are asked to express an opinion during a patient's lifetime as to his fitness to make a will, as when, after his death, they are required to advise as to disputing any will so made, or to give evidence in the event of any such dispute arising.

It is hoped, too, that a statement of the law upon this subject, which has been written from a modern point of view, may prove useful to lawyers in their profession.

CHAPTER I

CAPACITY OF THE INSANE AS WITNESSES

THE evidence of witnesses is either verbal or written.

With regard to verbal evidence, when any question of the competency (or fitness) of a witness to give evidence arises, because there is a doubt whether he be not of defective understanding, the determination of such question is a matter for the presiding judge to decide. This he does on the witness being offered for examination, or, as lawyers technically term it, on the *voir dire* (that is to say, on the witness wishing to speak as such). This rule has long existed [*R. v. Anon*, cited in *A. G. v. Hitchcock* (1847)]. Witnesses may be examined and cross-examined on this question of competency [*R. v. Hill, infra*]. It is, however, for the jury to say whether they will attach any, or what weight to it, even after the evidence has been admitted [*R. v. Hill, infra*].

It is a general rule that idiots, and lunatics during their lunacy, are incompetent to be witnesses [*Com. Dig.*, "Testimony," witness, *a. 1*]. But lunatics, in their lucid intervals, have always been held to be competent witnesses [*ibid.*]; and a modern decision has settled that, even during their lunacy, lunatics are competent witnesses if the presiding judge thinks that they are likely to give truthful evidence about the subject concerning which it is proposed to call them [*R. v. Hill* (1851)]; and Parke, B., said that a writ of *habeas corpus ad testificandum* should be granted to bring up a lunatic if an affidavit were made that he was not in a dangerous condition [see *Fennell v. Tait* (1834)].

In the case of *R. v. Hill*, an attendant at a private asylum at Camberwell was charged with the manslaughter of a patient. It was proposed to call another patient, named Richard Donelly, as a witness to prove what had taken place. Donelly suffered from the delusion that there

were a number of spirits around him, who were constantly talking to him; but the medical superintendent of the asylum said that he believed him to be quite capable of giving an account of any transaction that might happen before his eyes; he had always found him so: it was solely with reference to the delusion about spirits that he considered him to be a lunatic, and when he had had conversations with him on ordinary subjects he had found him perfectly rational, but for this delusion. Upon this his evidence was admitted, and the accused was found guilty. The Court for Crown Cases Reserved, after elaborate argument on both sides, held that this evidence had been rightly received.

Deaf and dumb persons were formerly *presumed* not to possess sufficient intelligence to be witnesses; but it is at least doubtful whether such a presumption would be made in these days [*Harrod v. Harrod* (1854)]. Such persons may give evidence either through an interpreter and by signs [*Ruston's case* (1786)], or else in writing [per Chief Justice Best in *Morisson v. Leonard* (1827)].

If a witness has been allowed by the judge to give evidence, on the assumption that he is competent, but it afterwards turns out, in the course of his evidence, that he really is not so, the evidence which he has already given may be struck out and altogether withdrawn from the jury, who must then try to consider the case as if this evidence had never been given at all [*R. v. Whitehead* (1866)].

The evidence of a witness is, when written, contained in a statement in writing called an "affidavit," the truth of which is sworn to by the witness before some duly authorised person. The Rules of the Court [Order 38, r. 5] require that, amongst other things, a statement of the "place" where it is sworn should appear on the face of every affidavit in what is technically called the "jurat" (*i. e.* the statement by the person, before whom it is sworn, as to the compliance with the necessary formalities). When an affidavit is sworn in an asylum, that fact must be noticed in the "jurat." It is conceived that where the person making the affidavit is insane, and that fact does not otherwise appear, a statement to the effect that he is insane

ought to appear in the jurat. Whenever it appears that the person making it is insane, before an affidavit can be read as evidence, a preliminary inquiry must take place as to the competency of such person to give evidence. Such competency is decided by exactly the same rules as those which have just been stated with regard to such a person giving oral evidence [*Spittle v. Walton* (1871)].

It will be remarked that the rules of law with regard to the competency of an insane person to give evidence are founded upon the doctrine of "Partial Insanity," and form, indeed, one of the most striking instances of its application in the law. The fact that a person is insane does not, of itself, render him incompetent to be a witness. Incompetency for this purpose does not arise, unless the person is shown to be *so* insane as to be unreliable with regard to the matter upon which his evidence is required. Nevertheless the existence of insanity in the proposed witness at once renders it necessary that, before his evidence is received, a preliminary inquiry shall be held to ascertain how far such insanity extends.

CHAPTER II

THE CAPACITY OF THE INSANE TO MAKE OR REVOKE A WILL*

THE cardinal principle to be kept steadily in mind in considering the validity of a testamentary act is that every such act is required by law to be "that of a person of full age and sound disposing mind, executed in due form." Any consideration of the due legal mode of execution (called by lawyers the *factum*) of an alleged testamentary act would be foreign to this work.

The requirement of the law which immediately concerns us is the one which renders it necessary that every such testamentary act should be that of a person of "sound disposing mind," or, as it is sometimes expressed, "of sound mind, memory, and understanding" [see *Keays v. McDonnell* (1872)]. If it be not, the act will be invalid.

Before considering what, in law, constitutes a "sound disposing mind," it must be pointed out that a person's competency to *revoke* a will or codicil, previously made, is governed by exactly the same principles as those which regulate his capacity to make one. Direct authority for this may be found, not only in the English cases presently cited, but also in a Scotch case, of *Laing v. Bruce*, decided in 1838, in which capacity to *revoke* a will was considered not to be taken away by insane delusions which were only intermittent, and which had during the lifetime of the testatrix been regarded by those about her as unimportant. Sir C. Cresswell [in *Harris v. Berrall* (1858)] said that an insane

* The legal authorities in this chapter are referred to somewhat more copiously than in the rest of the work, as the writers have not been able to discover any text-book dealing with the subject which was originally written, as this chapter has been, from the standpoint of the views which have prevailed since 1870; and it is hoped that the chapter will thus prove of utility even to the professional legal reader.

person cannot be said to have any intention, and that consequently those who through insanity are incapable of making a will are equally incapable of revoking one already made [see also *Scruby v. Fordham* (1822) ; and *In the goods of Brand* (1831)]. Accordingly the expression "testamentary act" will be understood, when used in this chapter, to refer to the question of capacity to *revoke* as well as to make a will.

The rules as to acts done during a *temporary mental disturbance*, such as delirium, are the same as those which prevail with regard to acts done during insanity [*In the goods of Shaw* (1838) ; *Brunt v. Brunt* (1873)]. The difficulty of proving that the act set up is valid is indeed less where capacity is the normal condition, and incapacity the exception (see *post*, p. 266), than it is where the converse is the case. Consequently it may be assumed, except where otherwise stated, that there is no legal difference to be noted between those cases in which the usual mental condition is insanity, and those in which only a temporary mental disturbance exists.

The law with regard to the "sound disposing mind," which is necessary to the validity of every testamentary act, is that "whatever degree of mental soundness is required for . . . responsibility for crime, capacity to marry, capacity to contract, capacity to give evidence as a witness, . . . the highest degree of all, if degrees there be, is required in order to constitute capacity to make a testamentary disposition" [see *Boughton v. Knight* (1873)]. To render a testamentary act valid, it is on the one hand essential that the alleged testator should possess such a degree of mental power that he "shall understand the nature of the act and its effects ; shall understand the extent of the property of which he is disposing ; shall be able to comprehend and appreciate the claims to which he ought to give effect ; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties—that no insane delusions shall influence his will in disposing of his property, and bring about a disposal of it, which, if the mind had been sound, should not

have been made" [*Banks v. Goodfellow* (1870)]. But although, on the one hand, it is legally necessary that the testator possess the above degree of *mental power*, on the other hand it is not necessary that he should also possess *the will* to exercise such power aright. For "the law does not say that a man is incapacitated from making a will if he proposes to make a disposition of his property moved by capricious, frivolous, mean, or even bad motives." Judges say "we do not sit to correct injustice in that respect. Our duty is limited to this, to take care that that, and that only, which is the true expression of a man's real mind shall have effect given to it as his will" [see per Hannen, J., in *Boughton v. Knight* (1873)].

The want of a "sound disposing mind" may be due either to physical or to mental causes. Mental derangement is, without doubt, the most common cause of want of testamentary capacity. But testamentary incapacity may equally well be the result either of some supervening physical infirmity, or of the decay caused by advancing age or the stress of disease. There is no want of testamentary capacity if the mind of a testator, when called to exertion, be capable of attention and application; and mere weakness of mind and forgetfulness produced by illness or senility are not in themselves sufficient to invalidate a will [*Tufnell v. Constable* (1835)]. To render a will made under such circumstances valid, it is however necessary that the testator should not only understand that he is making his will, and what the immediate effects of it will be, and who will be the persons benefited, but that he should also be capable of comprehending the full extent of his property, and the nature of the claims of those whom, by his will, he is excluding from participation in it [*Harwood v. Baker* (1840); see also *Jones v. Goodrich* (1844); *Kinleside v. Harrison* (1818); and *Banks v. Goodfellow* (1870), where the whole subject is very fully discussed].

In cases of loss of capacity through illness, it is nevertheless not necessary that this degree of intelligence should be retained *at the actual moment of the execution of the will*. If, at a time when the capacity was undoubted, instructions for a will have been given, it will be valid, even though,

at the actual moment of execution, the testator only retain sufficient comprehension to understand that he is executing a will, which he believes to be in accordance with instructions which he recollects having given, though he is at that moment incapable, even when roused, of remembering what those instructions were, or of understanding the will read over to him [*Parker v. Felgate* (1883)].

Where delirium produced by disease or drunkenness destroys the power of appreciating the effect of the will, both as to the actual gifts which it contains and also as to what it omits or prevents, such delirium causes testamentary incapacity so long as it produces a condition such as that just described [*Dennis v. Dennis* (1856) ; *Brogden v. Brown* (1825) ; *Ayrey v. Hill* (1824) ; *Wheeler v. Alderson* (1831)]. But in these cases incapacity only continues so long as the cause of it is present ; consequently a will made by a person who is liable to attacks of occasional incapacity, is valid, if it be proved to have been made when the disturbing cause was not present. Moreover, in cases such as those just mentioned, and, indeed, in all cases raising questions of testamentary capacity, the *prima facie* probability of a will, and its concurrence with former testamentary acts, or with the known intentions of the testator, are matters which will always be regarded by the Courts as strongly tending to show that capacity in fact remained, even though the physical condition of the testator might otherwise have rendered a contrary conclusion inevitable.

While physical causes, however, may, as has just been seen, deprive a person of a "sound disposing mind," mental disease is the most common cause of the deficiency. It has been pointed out in the Introductory Chapter (*ante*, p. 4), that persons mentally weak are divided by English law into "idiots" and "lunatics." From what has been there said it will have been gathered that, in law, the characteristic of "idiocy" is that it is a *permanent* mental deficiency [see *Bannatyne v. Bannatyne* (1852)], while "lunacy" is, in point of law, of a temporary nature only.

The consideration of the law as to the testamentary capacity of idiots need not detain us long. English law has always consistently held that an idiot cannot make a will. A deaf

and dumb person is, in the absence of evidence to the contrary, *presumed* to be an idiot [see *In the goods of Owston* (1862)], though this presumption may be rebutted by proof of actual mental capacity [*ibid.*]. Such lunatics as have been brought by their disease into a state of permanent incapacity may, for all practical purposes, be regarded as falling under the head of "idiots."

The consideration of testamentary capacity is a far more intricate subject, however, in the case of "lunatics," than when idiots or imbeciles are concerned. For, at the outset, it is not always easy to say whether a person of peculiar mental condition is, or is not, in fact and in law, a "lunatic" at all. Reference may here be made again to that part of the Introductory Chapter in which it is pointed out that the existence of insane delusions is a sure proof of insanity, though their absence is not a conclusive proof that a patient is not insane (*ante*, p. 24). In the same chapter a definition of an "insane delusion" has been given (*ante*, p. 25), and the necessity of distinguishing between "delusions" on the one hand, and "hallucinations" and "illusions" on the other, has also been pointed out (*ante*, p. 29). Moreover, attention has, in that chapter, been drawn to the distinction between insanity and mere eccentricity (*ante*, pp. 40, 41). These various distinctions must be carefully borne in mind, in considering the testamentary capacity of the insane.

It needs no authority to prove that "general insanity" is a cause of testamentary incapacity. The greatest difficulty arises in connection with the doctrine of the law as to the mental capacity of the "partially insane." Upon this latter question the law of England has passed through three separate and distinct periods.

The first of these periods lasted from the earliest times until 1848. In its very early days English law took, as its root, the rule of the Civil Law that a person who was mad, or deficient in mental intelligence (*mente captus*), was incapable of making a will [see *Inst.*, II, 12, 1].

During the earlier part of this first period of English law, however, the only measure was to ask whether the capability was inadequate to the act, and each case appears to have depended on its own special circumstances. In

the reign of James I, it was (in 1606) said that sane memory for the making of a will is not at all times when the party can speak "Yes" or "No," nor when he can answer anything with sense; but he ought to be "of judgment to discern and of perfect memory, otherwise the will is void" [see *Combe's case* (1606)]. Early in the next reign, and about 1628, it was said to be necessary that a testator should be possessed of "an understanding judgment fit to direct an estate." In the year 1840 testamentary capacity was, in the case of *Harwood v. Baker*, described by Mr. Justice Erskine in terms nearly such as might be employed at the present day. On the whole, however, it appears that during this period, and subject to general principles such as those we have just indicated, each case was decided on its own peculiar facts, and consequently afforded but little ground for the decision of any other which was not nearly or exactly similar. Thus, on the one hand, we find that, in the reign of Charles II, a will by a sickly child (persons under twenty-one could then make wills) in its nurse's favour was set aside; while in 1826 the will of a testator who, owing to an aversion which he had irrationally formed towards his only daughter, had made practically no provision for her, met with a similar fate [*Dew v. Clark*]. On the other hand, though the case belongs to a later period, no better example of a will being set up, though partial insanity no doubt existed, can be found, than is afforded by the case of *Roe v. Nix*, the facts of which are stated at some length in a later portion of this chapter, although the case of *Cartwright v. Cartwright** (1793) affords an earlier instance (turning chiefly, however, upon the question of whether such will had been made during a lucid interval) of a will by a patient in

* It is sometimes said that the judge in this case (Sir William Wynne) laid down the rule that the instrument in dispute was the *only* evidence of the capacity of the person who made it. Although he relied on the "officiousness" of the will in that particular case, the judge probably never meant to lay down any *general* rule that the reasonableness of a testamentary disposition is the sole criterion of testamentary capacity. If he did, he has since been overruled, but the officiousness is still a weighty element in considering the testamentary capacity, though not the only test.

an asylum being upheld in spite of the opinion of the medical men of such asylum being adverse to the patient's sanity.

Towards the latter portion of the period, however, there was a tendency to formulate a principle ; thus Lord Kenyon, in the case of *Greenwood v. Greenwood* (1790), stated in effect that if a testator had the power to summon up his mind, so as to know both the extent and nature of his property and to recognise who should be the object of his bounty, he would then be competent to make his will ; while various cases show that the one thing needful was what is now technically known as "a disposing mind"—that is to say, a mind which understands the nature of the act it is doing and its effects, the extent of the property of which it is disposing, and is able to comprehend and appreciate the claims which it ought to recognise or consider. It was never necessary that there should be a complete grasp and power apart from the objects of disposition.

The second period of the English law as to mental capacity in testamentary matters extends from 1848 down to the year 1870. In 1843 *MacNaughten's case* had directed general attention to the doctrine of partial insanity. As we have seen, Lord Brougham had, in the discussion which subsequently arose, strenuously opposed the introduction of that doctrine. Five years later (in 1848) came the decision in *Waring v. Waring*. In that case it appeared that the testatrix had entertained a violent and unreasonable aversion to many, if not most, of her family, and had laboured under a great variety of delusions, among them being that she thought that many around her were great personages in disguise ; and by the will in dispute she had disinherited all her relations, and in particular her brother, under the insane and groundless delusion that he had become a member of the Roman Catholic Church—a body for which she entertained a vehement dislike. Moreover, she had made a will in favour of a person whose only claim on her bounty was that she had read some public utterances of his vehemently assailing the Roman Catholic Church. The whole facts so closely resembled those in the previous case of *Dew v. Clark* that they would have justified the Court in

setting aside the will; but Lord Brougham, not content with merely doing this, made his judgment an occasion for repeating the views which, as we have already seen, he had expressed in the House of Lords in 1843. Shortly, these views were that the mind is (as, indeed, it is still regarded by a large school of medical science to be) one indivisible whole; and, being such, is either sound or unsound as a whole, and accordingly on one side of the line of sanity or the other. Regarding the matter in this light, Lord Brougham considered that the testatrix in *Waring v. Waring* was plainly amongst the class of the insane, just as MacNaughten and Martin were regarded by him as sane. His remarks on that occasion were not, in truth, necessary for the decision of *Waring v. Waring* itself, but the case afforded a tempting opportunity (and great judges are sometimes prone to seize upon such opportunities) for him to proclaim his well-considered views upon the doctrine (then a new-fangled one) of "Partial Insanity." The views thus enunciated were avowedly adopted nearly twenty years later by Sir J. P. Wilde (Lord Penzance) in the case of *Smith v. Tebbit* (1867). Here, again, however, they were not necessary for the actual decision, since the testatrix in this case also had taken a violent and unnatural aversion to her sister, whom she was under the delusion was a child of the Devil and reserved by the Deity for a warm reception in a place never mentioned to ears polite; and, further, the testatrix fancied she was one of the Trinity, and that the person whom she made beneficiary under her will was another person of the Trinity. The facts of the case, therefore, clearly fell within the case of *Dew v. Clark*; and, moreover, Chief Justice Cockburn said, in *Banks v. Goodfellow*, that in this case, as also in *Waring v. Waring*, the testatrix was suffering from general, and not mere partial, insanity.

The short result of the doctrine propounded by Lord Brougham in *Waring v. Waring* was, as stated by Chief Justice Cockburn, as follows: "to constitute testamentary capacity, soundness of mind is indispensably necessary. But the mind, though it has various faculties, is one and indivisible. If it is disordered in any one of these faculties, if it

labours under any delusion arising from such disorder, though its other faculties and functions may remain undisturbed, it cannot be said to be sound. Such a mind is unsound, and testamentary incapacity is the necessary consequence" [Law Reports, 5 Q. B., at 559].

Whatever may be thought of it, the doctrine propounded in *Waring v. Waring* is the opinion of Lord Brougham on a metaphysical question upon which he was peculiarly qualified to judge, and was generally followed from 1848 to 1870 (a period of twenty-two years), and was expressly recognised by Lord Penzance (when Sir J. P. Wilde).

Its effect during the twenty-two years for which it prevailed was that no will, however "officious" (that is to say, however much in accordance with the testator's moral obligations), however rational, could be set up, if the testator had been suffering from derangement of any kind, however remote from, or unconnected with, the scheme and objects of his disposition.

The third period of the doctrine of English law as to the measure of the testamentary capacity of the insane was, however, entered upon in 1870. It was initiated by the well-known case of *Banks v. Goodfellow*, the facts of which will be stated presently. In the course of a learned and elaborate judgment which forms an unanimous judgment of a remarkably strong Court of Queen's Bench, Chief Justice Cockburn pointed out that the doctrine propounded in *Waring v. Waring*, and accepted in *Smith v. Tebbitt*, was one which was not necessary to the decision in either of those cases. For he remarked that "both these were cases of general, not of partial, insanity; in both, the delusions were multifarious, and of the wildest and most irrational character, abundantly indicating that the mind was diseased throughout. In both there was an insane suspicion or dislike of persons who should have been objects of affection; and, what is still more important, in both it was palpable that the delusions must have influenced the testamentary disposition impugned" [judgment in *Banks v. Goodfellow* (1870)]. The judgment thus given in *Banks v. Goodfellow* took into consideration both the views of foreign writers upon medical jurisprudence and the decisions of

foreign and American courts. In the result, the Court set up the doctrine that "partial insanity" is not in itself sufficient to invalidate a will, unless it can be reasonably said that the delusions actually existing in a testator's mind are connected with, and may reasonably be said to have influenced, the dispositions contained in the instrument. There was, indeed, no appeal against the decision in *Banks v. Goodfellow*, but the doctrine laid down by it has been since accepted and confirmed by the Probate Division of the High Court [*Boughton v. Knight* (1873) ; *Smee v. Smee* (1879) ; and *Murfitt v. Smith* (1887)] ; approved by the Chancery Division in the recent case of *Jenkins v. Morris* (1880) ; and assumed by the Court of Appeal in the same case to be correct.

As it is usually understood, the law, as established by the case of *Banks v. Goodfellow*, is that, if a testator possess the degree of capacity which has previously been pointed out as necessary to constitute a "*sound disposing mind*," he will then be perfectly capable of making a valid testament, even though he be at the time admittedly possessed by delusions, provided that such delusions cannot be reasonably said to have had any effect on the dispositions of the will. The rule as laid down by the judges is that "Where in the result a jury are satisfied that the delusion has not affected the general faculties of the mind and can have had no effect upon the will we see no sufficient reason why the testator should be held to have lost his right to make a will, or why a will made under such circumstances should not be upheld [*Banks v. Goodfellow* (1870), followed in *Boughton v. Knight* (1873) and *Murfitt v. Smith* (1887)].

The abstract principles of the law with regard to "partial insanity" in testamentary cases will be perhaps understood the better if there be now given by way of example one instance in which, in pursuance of these principles, a testamentary disposition has been held valid, and also one in which, in accordance with the same principles, it has been held to be invalid. For, as Lord Coke says, "examples do teach."

In the case of *Banks v. Goodfellow* itself, a will was held to be valid under the following circumstances. The testator,

one John Banks, was what is called in Cumberland, where he lived, a "statesman" (*i. e.* an estates man), but would be known in other parts of England as a "yeoman." He had been under restraint as a lunatic in 1841. By a will dated in 1863 he left the small landed estate which he owned, and indeed the whole of his real and personal property, to his niece, one Margaret Goodfellow, who, at the time when his will was made, was his heir-at-law. He died in 1865; soon after this the niece also died, being at the time of her death under age and unmarried. Her half brother was Margaret's heir-at-law; while, if Margaret were out of the way, the plaintiff, who was a nephew of the testator, and called by the same name (John Banks), was the testator's heir-at-law. Under these circumstances a dispute arose between Margaret Goodfellow's heir-at-law and the John Banks who was now the testator's heir-at-law, as to which of them was entitled to the testator's property. If the will was valid, then the land which the testator had left became thereby the property of Margaret Goodfellow, and so of the defendant also, in succession to her; but if the will was invalid through incapacity of the testator, he would then have died intestate, and the plaintiff would be entitled on the death of Margaret Goodfellow to all the landed property. The dispute as to the validity of the will of the testator John Banks came to be tried at the Cumberland Spring Assizes in 1869.

On the one hand, and in opposition to the will, the following facts were proved. The testator had laboured under delusions between 1841 and the date of his alleged will in 1861. He had, too, conceived a violent aversion towards a man named Featherstone Alexander, and, notwithstanding the death of the latter some years before the date of the will, the testator up to that time had continued to believe that this man still pursued and molested him, and the mere mention of his name was sufficient to throw him into a state of violent excitement. He also believed that he was frequently pursued and molested by devils or evil spirits, whom he believed to be visibly present.

On the other hand, it appeared that the testator managed his own money affairs (which, however, were on a limited

scale), and was careful of his money. According to the evidence of a witness named Tolson, who had acted as his agent in receiving the rents of some cottage property at Keswick, amounting to about £80 a year, the testator had not only always shown himself capable of transacting business with him, but had also, on the last occasion of Tolson's coming to pay the rents, suggested to him to take a lease of the cottages in question, so as to relieve him (the testator) from all risk and trouble in the matter. He had also desired Tolson when he came to pay over the next half-year's rents to bring with him a Mr. Ansell, an attorney of Keswick, as he wanted to see him about making a will. On the 2nd December, 1863, Tolson went to Arkleby, where the testator lived, taking Ansell with him. On their arrival, the testator, according to the statement of Ansell and Tolson, told Ansell he wished to make his will. He fetched from his room a will, which he had made in 1838, in favour of his sister, who had since died, and said he wished to give all his property to his niece, Margaret Goodfellow, in the same way. On Mr. Ansell asking who should be the executors, the testator turned to his niece, who was present, and asked who she thought should be executors; whereupon she desired that Tolson should be one, and asked who should be the other, when the name of the other executor, Thirlwall, was suggested by a person present, and assented to by the testator. The instructions thus received by Ansell were put down by him on paper, and having been read over to the testator, were, by the desire of Ansell, signed by him, and his signature was formally attested by two witnesses, so as to make the paper a sufficient and valid will, although it was intended that a more formal document should afterwards be prepared and executed; the reason given by Ansell for such signing and attestation of the instructions being, that he always pursued this course when his clients lived at a distance from him, and time would be required between the taking the instructions and the final completion of the will, the distance between their respective residences being about twenty miles. After the matter of the will had been disposed of, a conversation took place concerning the proposed lease to Tolson. The testator calculated the amount of the rents,

and finding that they came to £80, offered Tolson a lease of the cottages for seven years at a rent of £76 a year. This being agreed to by Tolson, Ansell was instructed to prepare a lease on these terms; and the instructions, having been reduced to writing, were signed by the testator and Tolson. After this, Tolson proceeded to settle with the testator for the rents received by him, which amounted to £40 7s. 4d. Of this, Tolson produced £29 in cash, and offered his cheque for the remainder; but the testator observed that a cheque would be of no use to him, as there was no bank near, and desired Tolson to pay the balance into a bank at Keswick, at which the testator had an account. After this, a conversation ensued with a Mrs. Routledge, at whose house the testator lodged, as to the amount which he should pay her weekly for his board and lodging combined, which, if truly reported, tended strongly to show that he was then capable of managing his affairs. On the 28th of December, Tolson took over the will and lease, which had been prepared by Ansell, to the testator, who, having read them two or three times, said they were all right, after which both instruments were executed by him, and the will was duly attested.

Upon this evidence the judge who tried the case left it to the jury to say "whether on the 2nd December, 1863, or on the 28th December, 1863, or on both, the testator was capable of having such a knowledge and appreciation of facts, and was so far master of his intentions, free from delusions, as would enable him to have a will of his own in the disposition of his property, and act upon it"—telling the jury that "the mere fact of his being able to recollect things, or to converse rationally on some subjects, or to manage some business, would not be sufficient to show he was sane; while on the other hand, slowness, feebleness, and eccentricities, would not be sufficient to show he was insane. The whole burden of showing that the testator was fit at the time was on the defendant." The jury returned a verdict for the defendant, saying that they found that the will "was a good and valid will."

On appeal, by way of motion for a new trial, from the judgment then given in favour of the will, it was held by a Divisional Court of Queen's Bench that the

meaning of this finding must be assumed to be that the testator laboured under the insane delusion ascribed to him, but that, on the other hand, these delusions had not, nor were calculated to have, any influence on him in the disposal of his property; and that, irrespective of these delusions, the state of his mental faculties was such as to render him capable of making a will, and that the will under consideration was valid, inasmuch as though two delusions disturbed the mind of the testator, the one that he was pursued by spirits, the other that a man long since dead came personally to molest him, neither of these delusions—the dead man not having been in any way connected with him—had, or could have had, any influence upon him in disposing of his property. It was also laid down as a general principle that for the reasons which were given in the judgment in the case in question with great learning and elaboration, “a jury should be told in such a case that the existence of a delusion, compatible with the retention of the general powers and faculties of the mind, will not be sufficient to overthrow the will, unless it were such as was calculated to influence the testator in making it.”

Even the fact that a person has during lifetime been treated by the law as a lunatic is not conclusive evidence that such person does not possess testamentary capacity [see *re Wyndham* (1862)]. Indeed, an inquisition, finding that the deceased was or was not insane, is only *primâ facie* evidence of the sanity or insanity of a person who is alleged to have performed a testamentary act.

An example of this principle, which is of a special interest to medical men, was afforded not very long since by the case of *Roe v. Nix* (1892). From a report in *The Times* the material facts of that case appear to have been as follows: H. R. Roe as a legatee thereunder propounded a document dated 18th September, 1891, which purported to be the last will of one Ellen Roe. The alleged testatrix, Miss Ellen Roe, was about sixty-seven years of age at the time of her death. Having, as was alleged, become addicted to habits of intemperance, she had at first been subjected by her friends to a little informal restraint. Subsequently, in consequence of an uncle in whose house she resided having left

her a considerable sum of money, she had been placed under inquisition, which was said to have become necessary in order that the money should be properly dealt with. The Inquisition had been held about seven years before her death. After this she had at various times been placed both in different institutions for the reception of the insane, and also as a boarder in a private family. In 1888 she was so much better that she was removed from an asylum at Exeter, in which she had been placed ; but there was never any formal discharge, nor was the Inquisition ever formally superseded. Miss Roe had subsequently been again placed in an asylum, and in November, 1890, she had been sent to the Holloway Sanatorium at Virginia Water, where, being a Chancery patient, she continued to be, as she of course had been ever since the finding of the Inquisition, from time to time visited by the Lord Chancellor's Visitors in Lunacy. Miss Roe received a letter from one of these Visitors addressed to her and dated 3rd September, 1888, in which the writer, speaking as an Individual Visitor and not purporting to do so in the name of the Board of Visitors, said that Miss Roe was perfectly capable of making a will, and advised her to make one. The fair inference to be drawn from the subsequent evidence given at the trial is, perhaps, that the mind of this one of the Visitors was, at one time, in a state of balance as to the fitness of Miss Roe to make a will at that particular moment.* Soon after this she executed some

* Patients of unsound mind, more especially those suffering from a form of insanity in which it is a marked characteristic that they, from time to time, take unreasoning aversions to those who have been any time about them, often ask a Visitor in Lunacy the embarrassing question, "Can I make a will?" The authors have reason to believe that the Visitors generally give to this question a cautious but strictly accurate answer, to the effect that the patient can *make* a will, if greatly desirous of doing so, but that the will may, like every one else's, be disputed; that the patient's peculiar situation renders it specially likely that this will happen; and that, therefore, nothing ought to be done without great caution and much consideration. The writer of the letter to Miss Roe, which is referred to above, possibly thinking (as he well might) that English law at the present time says that a patient may be so unsound of mind as to be incapable of managing his own affairs, and yet capable of making a will, was led by the peculiar circumstances, and what would appear to have been the unsettled state of his own opinion (which is indicated above), to perhaps unguardedly say much more than is usually contained in the sort of answer generally given

wills and testamentary papers ; and, in the following year (March, 1889), she again made certain testamentary dispositions. All the wills and testamentary papers of 1888 and 1889 were prepared by a solicitor. Two years intervened, and then in March, 1891, while she was staying at Brighton, at the Seaside Convalescent Home of the Sanatorium, Miss Roe executed the alleged will of 18th September, 1891, which was propounded. This was a new will, the terms of which were discussed and arranged between her brother and herself, while the actual will appears to have been finally written out by the testatrix. Under the will and some testamentary papers by which it was subsequently supplemented, the brother took the greater part of such property as was at Miss Roe's disposition, and was in fact the only member of her family upon whom she conferred benefits, though pecuniary legacies were given to various strangers. Miss Roe died on 15th December, 1891. The medical superintendent of the Sanatorium had not known at the time when it was executed anything about the will of September, 1891 ; but when, after Miss Roe's death, it came to his knowledge that he had been appointed executor thereby, he refused to act in that capacity—a refusal which would, in Law, have the effect of depriving him of any legacy given to him as executor of the will.

Others, however, who were interested in establishing it, set up this will. Disputes in consequence arose between them and certain members of Miss Roe's family, as to its validity. These disputes culminated in a trial in the Probate Court, which took place before Mr. Justice Gorell Barnes and a special jury.

No useful purpose would be served by recapitulating in detail the evidence then given, since no identical case is likely to arise. The trial itself will be found reported at length in *The Times* of 2nd December, 1892, and the following days. It will suffice to say here that the evidence in support of the testamentary capacity of the deceased was that of nurses and officials of the Sanatorium ; of the lawyer who made the wills ; of those members of the family whom

by Visitors in Lunacy ; but he never said or reported that the Inquisition, finding Miss Roe insane, ought to be the subject of a Supersedeas.

those documents benefited ; and of the medical superintendent of the Sanatorium. On the other side, that is, against the testamentary capacity of the deceased, strong *prima facie* evidence of insanity was afforded by the continued existence of the commission in lunacy ; by the evidence of the Chancery Visitors, and of medical men under whose care Miss Roe had at different times been ; and finally of those members of the family who did not benefit by her alleged testamentary dispositions. In support of the Will, great stress was laid upon the letter of the Lord Chancellor's Visitor which has been above referred to, and the expressions in it,—although the letter was certainly addressed to a patient who was at that time still actually the subject of an Inquisition in lunacy, and may perhaps be explained by the considerations already pointed out, and also as having possibly been one written merely to humour the patient, which ought not to have been taken quite so literally by other people,—and also upon the opinion of the medical superintendent of the Sanatorium that Miss Roe possessed testamentary capacity when she made the wills. Equal stress was laid by those opposing the will, not only upon the existence of the Inquisition, upon the opinions of the Chancery Visitors after observation of Miss Roe, from the finding of the Inquisition and their knowledge of her actions, but also upon the fact that the medical superintendent of the Sanatorium had allowed Miss Roe to remain upon his books, and had described her in a statutory return shortly before her death as being of unsound mind,—although he explained that proceedings to supersede the Inquisition were, before Miss Roe's death, under discussion between the lawyers concerned in the matter, and further said that the Return relied upon had only been made by him as a matter of pure form, and to prevent trouble, since Miss Roe, sane or insane, was then obviously at the point of death.*

In the result the jury found for all the wills—a finding which, in point of law, had the effect of setting up the last

* Moreover, the Return, if closely looked at, is not really inconsistent with his evidence at the trial, since the Law apparently at present is that a person may be of unsound mind for many purposes, and yet possessed of testamentary capacity.

in date. The finding appears [see *The Times*, leading article, 10th December, 1892] to have met with the approval of the judge. *The Times* (in the leading article just referred to) expressed its concurrence with Mr. Justice Gorell Barnes when he said that this was "one of the most difficult cases that had ever come before the Court," and it further remarked that there was "plenty of evidence in support of either alternative," but the writer arrived at the conclusion that, while it could hardly be denied that Miss Roe was "more or less insane in mind," the verdict established that she nevertheless was "not insane enough to disqualify her from dealing with her property if she chose."

Both the medical and the legal reader will notice that *Roe v. Nix* is an extreme example of the application of the doctrine of "Partial Insanity" laid down in *Banks v. Goodfellow* (1870), and of the difficulties which may arise in its application.

The converse of the above cases, in which we have seen that the wills were upheld, was afforded in 1879 by the case of *Smee v. Smee*, in which the will was held to be invalid. The facts of that case were as follow :

On the one hand it would appear that the testator was a man of excellent business capacity, and had for some years held a high and responsible position in the Bank of England, where it was his duty to attend to most intricate accounts and to make most delicate and minute calculations, that he was an able and literary man, and might be in general described as an accomplished and refined gentleman and scholar. On the other hand he suffered from delusions, among which was the singular one that he was a natural son of George IV.

By a will which was in dispute, the Corporation of Brighton would have benefited largely. Now when one recalls the interest which George IV took in Brighton and its Pavilion, and his relationship with Mrs. FitzHerbert at that town, one sees that the presiding judge by no means put the matter too strongly when in charging the jury he told them that it was for them to consider "whether the character of his unsoundness does not show a possibility and probability of connection between his will, and the delusions

under which he suffered, namely, that he was connected with the man who had taken such deep interest in the town of Brighton." Neither should it be a matter of surprise that the jury found a verdict against the will on the ground that the testator was not of sound mind when it was executed.

The instances given above will, it is hoped, enable the reader the better to understand the principle of law, established by *Banks v. Goodfellow*, that there may be at once unsoundness of mind and yet an insanity so partial that the sufferer is not rendered incapable of making a valid will; while on the other hand there may be such insanity as, though it is only partial, to affect and invalidate the will actually made by the person so afflicted. The question may, however, arise as to what the law would be if it were shown that, though the testator was undoubtedly labouring under such delusions as might reasonably be said to be likely to influence him in making his will, those delusions did not, as a fact, have any such influence over the testator's mind at the moment of the execution of the will. The Court in *Banks v. Goodfellow* were not concerned to deal with this question, as the testator's delusions in that case apparently had no connection whatever with the dispositions of his will; but a case has subsequently arisen in the Chancery Division of the High Court which, though indeed not concerned with a question of testamentary capacity, yet seems to throw a considerable and direct light upon the matter under discussion [*Jenkins v. Morris* (1880)]. In that case, a deceased person had granted to the defendant a lease of a certain farm, which, as well as other things about him, he believed to be so impregnated with sulphur as to be diminished in value, and, indeed, he had ceased to inhabit the farm in consequence. On this ground, the plaintiff, the deceased's personal representative, tried to get the grant of the lease set aside. It was shown, however, that in spite of this strange delusion the deceased had acted in a reasonable and business-like manner in granting the lease to the defendant. The jury upon this evidence found a verdict that the deceased, at the time when the lease was granted, was not so insane as to be incompetent to dispose of his property, and the

grant of the lease was upheld. This (as has been mentioned above) was, it is true, not a will case; and, indeed, it is perhaps difficult to conceive circumstances under which a precisely similar question could arise with reference to testamentary capacity, since a legacy is both in point of law and as a fact a gift and not a sale, and it might therefore be difficult to prove that a testator had shown such business-like competency with regard to the disposition as was certainly displayed by the lessor in *Jenkins v. Morris*. Vice-Chancellor Hall, however, assumed (and possibly deliberately) that the judgment which he gave in *Jenkins v. Morris* would be equally applicable in a case of testamentary capacity. The case went to the Court of Appeal, but it does not appear that the latter Court expressed any opinion whatever with regard to the assumption that the decision would also govern the case of a will, which had been made by Vice-Chancellor Hall. Until the question actually arises for consideration in a will case, the law cannot, in the face of the Vice-Chancellor's judgment, be taken to be other than what was indicated above, namely, that if in a case of disputed testamentary capacity it should be proved that the testator was, at the time of the testamentary act, suffering from delusions which might reasonably be said to have affected his mind with regard to such testamentary act, it would be, nevertheless, open to those setting up the act in question to establish its validity by showing that, as a fact, his delusions did *not* influence him with regard to the act.

It should be noted, however, that if this doctrine be accepted, it would be for the person setting up the testamentary act to prove that as a fact the delusions, though connected with the dispositions of the Will, did not influence the testator's mind. It would not rest with the other party to show the contrary.

However this may be, and whatever may prove to be the effect in the future of the case of *Jenkins v. Morris* upon the law as to testamentary capacity, another question is suggested by the decision in *Banks v. Goodfellow* which may at some time become an important one. That question shortly is, whether the provisions of a will or other testamentary act are divisible in their nature, and whether, if it

be found that some of the dispositions of the will were in fact influenced by the testator's delusions while others of them were not, probate can be granted with respect to those provisions which are not so influenced, and refused as to the others. This question has never, it is believed, been broached before, either in any reported decision or in any legal text-book, and a grant of partial probate has never been demanded on this ground. It may, however, be argued that if the decision in *Banks v. Goodfellow* be carried to its logical extent, such a case would fall completely within its limits, and that the Court would be justified in granting probate of such dispositions of the will as were unaffected by the delusions, though refusing it with regard to those portions which might reasonably be said to be so affected. In support of this argument it might be urged that partial probate has been granted by the Court in cases where part of a will has been affected by fraud or mistake, and that in one case where a testator had been induced to make certain provisions in his will by means of undue influence, the Court refused probate of so much of his will as was so affected, while granting it as to the rest [*Trimblestown v. D'Alton* (1827); see also *Allen v. McPherson*, (1845), *Fulton v. Andrew* (1875), *Guardhouse v. Blackburn* (1866), *Harter v. Harter* (1873)]; and that a testator who signs a will, part of which is influenced by his delusions, is in much the same position, with regard to that part, as one who, though perfectly sane, has been induced by fraud or undue influence to sign a will, part of the contents of which he would not otherwise have approved. And, further, it might be said that since if the dispositions dictated by the testator's insanity were contained in one testamentary instrument, and another disposition not affected by the insanity were contained in a separate testamentary instrument, the former gift would clearly be bad, but (by the doctrine in *Banks v. Goodfellow*) the latter would as clearly be good; and that the mere accident as to whether they were contained in the same or in separate instruments cannot affect the principle by which their validity is regulated. To all this it might be shortly answered that the testamentary act which records, or destroys the record of, the different dispositions is one act, and that an act is indivisible;

and that since the act was at least in part influenced by a desire to give effect to and carry into execution wishes dictated by insane delusions, such act is so tainted as to be invalid altogether for every purpose. And it might further be urged in support of such a doctrine, that a contract for the sale of several different lots of goods at the same time forms but one contract and is indivisible, so that if the sale of a portion of the goods is required, by the Statute of Frauds, to be in writing, but the sale of the other portion of such goods is not governed by the statute, the whole contract is, nevertheless, one which falls within the statute, and, moreover, that such a case is within the statute in question, though none of the articles, taken separately, are alone of sufficient value to call the statute into operation [see *Baldehy v. Parker* (1823); *Elliott v. Thomas* (1838); *Bigg v. Whisking* (1853)].

The authors having suggested the question and hinted at the line of argument which might possibly be employed on either side, neither express at present any opinion upon the point, nor do they propose to go further into it in this place, being content to leave the question for judicial consideration, should the point arise.

Let us return from the consideration of this very interesting, but somewhat speculative, question to the consideration of those principles with regard to the testamentary capacity of the insane which have been actually laid down.

On the one hand, the mere presence of insane delusions wholly unconnected with the dispositions made by a testamentary act will not (as we have seen) invalidate such act; while on the other hand no degree of business capacity, however complete, will be sufficient to give validity to a testamentary act where it is once shown that such act has been influenced by the presence of delusions. "A man may be capable of transacting business of a complicated and important kind, involving the exercise of considerable powers of intellect, and yet may be subject to delusions so as to be unfit to make a will" [*Smee v. Smee* (1879)]. Perhaps no stronger example of this can be given than is afforded by the case of *Smee v. Smee* itself, the facts of which have already been mentioned.

In the remarks as to the effect of insanity upon the testamentary capacity which have hitherto been made, it has been assumed that the insanity, whatever be its nature, and whether it be general or only partial, is actively existing at the time of the alleged testamentary act. But if it can be shown that such act was done during a period when the testator's insanity was removed, or, in other words, during a lucid interval, the validity of such act will be established, notwithstanding the impossibility of showing the testator's general sanity. In other words, if it be established that the party doing the testamentary act, although habitually afflicted by a malady of the mind, has intermissions, and that there was such an intermission of the disorder at the time of the execution of the testamentary act, the general habitual insanity will not make the act invalid [see *Cartwright v. Cartwright* (1793)]. The old Civil Law was to the same effect [see *Justinian*, II, 12, 1]; and this was also asserted to be the law of England in the earliest text-books on the subject. For example, Swinburne, who wrote about 1590, distinctly says so [see *Swinburne*, II, 40], as also do numerous other old writers who might be cited; and the proposition has never since been doubted. But though this may be stated with perfect confidence as a preliminary axiom, it is by no means easy to say what exactly constitutes a "lucid interval." It is probable that no exact test can be laid down as to the degree of mental capacity which must be shown to have been restored in order to constitute a "lucid interval" and thus give validity to the testamentary act. Lord Thurlow (as is well known) thought that when lunacy has once been established it is necessary before any subsequent act of the patient can be regarded as valid to show that he has been restored to *as perfect a state of mind as he had had before the insanity occurred* [see *A. G. v. Parnter* (1792)]. This view, however, has subsequently been criticised and explained in various cases [*ex parte Holyland* (1805); *Hall v. Warren* (1804); *White v. Wilson* (1806)], and it may be taken that it is not now law. It may, however, be regarded as representing the highest point of recovery which has ever been demanded. On the other hand, in the case of *Cartwright v. Cartwright* (1793),

Sir William Wynne laid it down that if it can be established that the will in question is a "rational act rationally done," the whole case is proved. This dictum has, however, in its turn been criticised [*Chambers v. Queen's Proctor* (1840); *Nicholls v. Binns* (1858)] on the ground that it places the required standard of recovery too low. Indeed, Sir Herbert Jenner [in *Chambers v. Queen's Proctor* (1840)] pointed out that Sir William Wynne, though he laid down the above rule, "did not, even in the case of *Oartwright v. Oartwright* in which he formulated it, content himself with considering whether the act was a rational one, but looked into all the grounds and circumstances which accompanied it to see how far such act was the result of the deceased's own will and intention with regard to the claims of her family." The fact is that the question as to what constitutes a "lucid interval" probably varies considerably with each individual and with the particular circumstances of each case. Speaking in general terms, however, and endeavouring to frame a test which avoids either of the two extremes which have been stated above, it may be safely asserted that no testamentary act is valid unless the deceased had at the time of such act recovered at least that degree of intelligence which is connoted by the term "a disposing mind."

The best proof that a person's mind is at any given moment free from the insanity which formerly existed in it, is a voluntary admission that the delusions from which he suffered during his insanity were delusions [*Waring v. Waring* (1848); *Dr. Munro's case* (*temp.* Lord Mansfield)]. This test of sanity is, however, one which must always be accepted only with great caution, since insane persons are often very astute in concealing the fact that they still entertain, and are in truth still labouring under, ideas which they apparently confess to be delusions [*Waring v. Waring* (1848); *Prinsep v. Dyce Sombre* (1856)]. Moreover, the degree of evidence necessary to substantiate a testamentary act when mental aberration is proved to have previously existed, depends greatly, though not entirely, upon the character of such testamentary act itself [*Evans v. Knight and Moore* (1822)]. The rationality of the act, though not indeed conclusive, is very strong evidence of the existence of the intermission or lucid interval

[*Nicholls v. Binns* (1858); *Chambers v. Queen's Proctor* (1840)]; but in practice a testamentary act may always be set up most easily when its dispositions are what is technically called "officious," that is, when they fulfil the testator's moral duties, and are such as might accordingly have been expected from him [*Williams v. Goode* (1828); *Cartwright v. Cartwright* (1793); *Evans v. Knight* (1822); *Bannatyne v. Bannatyne* (1852); *Nicholls v. Binns* (1858)]. To obtain this result, however, the will must be free from any suspicion either attaching to the circumstances under which it was executed or as to the custody from which it is produced (*Evans v. Knight* (1822); *Brogden v. Brown* (1825); *Wheeler v. Alderson* (1831); *Bannatyne v. Bannatyne* (1852)]. An instance of circumstances of suspicion arises, for example, where the testator's solicitor was the drawer of the will and the person principally benefited by it.

Whenever it is sought to establish a testamentary act by showing that it was done during a "lucid interval," the evidence, it is hardly necessary to say, should be pointedly and clearly directed to the particular moment at which the act was done [*Groom v. Thomas* (1829)].

There is, however, no need to prove that the lucid interval existed for any particular period (such as a day, a month, or a year), provided that it be shown to have been sufficiently long for the completion of the act [*Cartwright v. Cartwright* (1793)]. Failing proof of this, it is obvious that it cannot be said that such act was done "during a lucid interval."

We have hitherto been speaking of a testator whose customary and usual state is one of insanity, but who enjoys at times a "lucid interval," that is to say, an exceptional interval or period when his usual condition of insanity ceases to prevail, and he for the time becomes of sound mind. The converse of this, however, occurs in the case of a testator who is generally sane, but undergoes occasional and exceptional intervals of insanity. Such a state exists, for instance, if a person be liable to become insane whenever under the influence of drink, or suffers delirium induced by illness, &c. As in these cases it is the state of insanity, and not of

sanity, which is the interval or exception, it is in them obviously more easy to set up lucidity than when insanity is the testator's usual and general condition. In such cases, indeed, proof of the absence of the disturbing cause (as, for instance, intoxication) will usually suffice to show capacity at the time; it is presumed that the cause being absent at the time of the testamentary act the incapacity will also be non-existent [see *Kinleside v. Harrison* (1818); *Ayrey v. Hill* (1824); *Brogden v. Brown* (1825); *Wheeler v. Alderson* (1831); *Dennis v. Dennis* (1856)].

In all these cases, whether they raise a question of the existence of a lucid interval, or the absence of occasional insanity, the Courts look more to the facts deposed to and proved than to any opinion formed by the witnesses for themselves from those facts [*Groom v. Thomas* (1829)].

During the progress of the case of *Roe v. Nix* (1892) it was suggested that reports of the Chancery Visitors about the deceased patient might be looked at, and the Court of Probate was inclined to permit this to be done; but upon a communication as to what was desired being made to the six Lords Justices who happened to be then sitting in the two Courts of Appeal, they were unanimously of opinion that these reports ought to have been destroyed on the death of the patient, and in any case must be regarded as having been so, and that they therefore could not be looked at [*Roe v. Nix* (1892)].

The preceding portions of this chapter have been devoted to discussing the principles which serve to indicate, in the case of any particular person whose sanity is impugned, what will, and what will not, constitute testamentary capacity. It remains to consider a question only less important in its effect than the principles already discussed, namely, whether, in case of disputed testamentary capacity, it is for the person setting up a testamentary act to satisfy the Courts that the testator had sufficient capacity for its execution, or for the person alleging incapacity to substantiate his assertion.

To furnish a solution of this question, reference must be made to the proposition which was stated at the opening of this chapter to be the cardinal principle governing every

testamentary act, namely, that it must be the act of a person of full age and of *sound disposing mind*. As a corollary from this general principle it follows that, in every case, the burden lies upon those who set up a testamentary act to prove that such act answers this description. This burden rests, in every case, upon those who propose and set up such act, and no testamentary act can be pronounced to be valid until such proof has been given with reference to it [*Waring v. Waring* (1848) ; *Sutton v. Sadler* (1857) ; *Keays v. McDonnell* (1872) ; *Smee v. Smee* (1879), with which compare *A. G. v. Parnter* (1792) ; *Evans v. Knight* (1822) ; *Groom v. Thomas* (1829)].* The very great majority of mankind, however, are sane, and consequently if a testator be shown to be a man who is, to use the words of a great judge, "going about the world dealing and acting as if he were sane," while it is also shown that the testamentary act set up is one that is on the face of it reasonable, and that its factum (or execution) was regular, a presumption that the testator was of full testamentary capacity will then arise [*Waring v. Waring* (1848) ; *Symes v. Green* (1859)]. In *Sutton v. Sadler* (1857) it was said that this presumption is one of "mixed law and fact," but it appears to be, in truth, nothing more than a presumption of fact arising on the production of such evidence as is above suggested. When, however, there are any circumstances of suspicion attaching to the disposition (as, for instance, if the testator had, previously to the date of the acts, been actually under control), higher proof of capacity must be offered in the first instance, or the onus of showing incapacity will not be thrown on the other side [see *Bannatyne v. Bannatyne* (1852) ; *Wheeler v. Alderson* (1831) ; *Prinsep v. Dyce Sombre* (1856)].

* Mr. Pitt Taylor, in his work on evidence (edit. 1885, p. 347), states the law to be exactly contrary to what is submitted above. He arrives at this conclusion by making the maxim of Criminal Law, that every man is presumed to be sane until the contrary is proved, apply in probate cases also, for which proposition he cites, as an authority, the case of *Sutton v. Sadler* (1857). If, however, the authors of this present work are justified in the view they take of that case, it fails to support Mr. Pitt Taylor's contention ; while Cresswell, J., in delivering the judgment of the Court in that case, expressly said that the rule in criminal cases rested on different considerations.

Moreover, the amount of evidence required in the first place to establish the capacity of a testator, depends very greatly upon the probability of the intentions which the instrument propounded expresses, and the "officiousness" of its dispositions [*Evans v. Knight* (1822) ; *Williams v. Goude* (1828) ; *Steed v. Calley* (1836)].

If those setting up the testamentary act are unable to give in the first place such evidence as will raise a *prima facie* presumption of the testator's sanity, or if, such evidence having been given, those opposing the testamentary act give evidence of either general insanity, or of such *partial* insanity as is likely to have influenced the testator's mind (or which, according to *Jenkins v. Morris* (1880), has actually and in fact influenced it), they may fall back upon the allegation that the testamentary act which they allege was executed during a "lucid interval," and say that it was in truth uninfluenced by any partial insanity which may have been previously shown to have existed in the testator [see *A. G. v. Parnter* (1792)].

With regard to the degree of proof which is required in cases in which the existence of such a "lucid interval" is relied upon, we have already considered what amount of mental recovery is necessary to constitute such an interval, and therefore it will be sufficient to say again here that the necessity of proving such an interval rests with the person who sets up the testamentary act, and that until such proof is given the testamentary act cannot be pronounced valid. This is the case even where the testator was a person generally sane though liable to attacks of occasional insanity, though the reader should be reminded that, in these cases, proof of testamentary capacity is much more easy than it is when insanity has prevailed with only occasional lucid intervals [see *Brogden v. Brown* (1825)].

In any case where the evidence has been given on both sides, on the one in proof of capacity, and on the other to disprove it, the evidence of capacity must be not only equal in strength to the evidence of incapacity, but it must also exceed and counterbalance it, or the insanity will be held to have been established [*Sutton v. Sadler* (1857) ; *Symes v. Green* (1859)]. Accordingly, where the evidence of sanity given by the

person setting up a testamentary act, and the evidence of insanity given by those who are opposing it, balance each other evenly, it is a misdirection to tell the jury that the case is governed by the presumption that every man is presumed to be sane till he is shown to be insane [*Sutton v. Sadler* (1857)]. Indeed, where insanity is proved, but a lucid interval is set up, if the evidence leave room for any presumption at all, the presumption which ought to be adopted would rather appear to be that a state of things shown to have once existed is to be presumed to continue till the contrary is proved.

It may be observed that, though in general and unless there be special circumstances leading to a contrary conclusion, a will which was in a testator's custody up to the time of his death, but cannot be found after that event, is presumed to have been destroyed by him with the intention of thereby revoking it; yet this presumption does not apply where a testator, subsequently to the execution of a will, became so insane as to be no longer capable of any testamentary act, and continued in that state up to the time of his death; in such a case the burden of proving that the will was destroyed while the testator was of sound mind lies upon the party setting up the revocation, and in the absence of evidence to show that the deceased was of sound mind at the moment when the will was destroyed, it will be taken that he was at that time incapable, and the contents of the will will be admitted to probate [*Sprigge v. Sprigge* (1868); see also *Benson v. Benson* (1869) and *Harris v. Berall* (1858)].

Finally, if it be proved that a deceased person was so insane that he was incompetent to make a testamentary disposition, though he, in fact, had executed a document purporting to be a will, administration may be granted as in the case of an intestacy [*In the goods of A. G. Rich* (1892)].

APPENDICES

APPENDIX A

REGULATIONS OF THE BOARD OF VISITORS AS TO PERSONS FOUND INSANE BY INQUISITION.

As pointed out in the text (at p. 92), a Board of Visitors supervises the arrangements made by the committees of the persons of those who have been found lunatic by inquisition. Persons who have been found lunatic by inquisition are frequently called "Chancery patients," this being a convenient expression—which is commonly used by medical men as well as by the public—to describe persons of the class just mentioned, and one which is, in consequence, well understood generally.

The practice of the Board of Visitors requires (1) that the permission of the visitors be obtained by the committee of his person before the residence of a "Chancery patient" is changed (no other permission is necessary), and that the application for such permission be made at least three days previously to the proposed change; (2) that No. 1 of the forms annexed to this Appendix (which form, it will be noticed, varies a little according to the amount of the expenditure allowed by the Masters in Lunacy) shall be *annually* filled up by the committee of the person; and (3) that No. 2 of the forms annexed to this Appendix shall be filled up by the committee of the person *biennially*. It will be noted that the two forms in question are a most important check upon the committee of the person.

The Board of Lunacy has not, save in the three respects above indicated, issued any regulations which are of general application and govern all cases, although the Commissioners in Lunacy have (as will be seen in Appendix B) issued such regulations with regard to the administration of the Lunacy Acts. Under the Board of Lunacy the case of each individual "Chancery patient" is (save with regard to the three matters just pointed out) governed by special regulations made with regard to each individual case. The visitors, however, may, if they consider it necessary, in any particular case order that all or any of the books named in the Lunacy Acts shall be kept. For instance, there is little doubt that should it become necessary to resort to it, the visitors would order the use of "mechanical restraint" to be recorded in the same way as the Lunacy Act, and the order of the Commissioners in Lunacy under it requires it to be in ordinary cases coming within the operation of that Act. The Board of Visitors may, again, if it is considered necessary, order that a "Chancery patient" shall be visited by a medical practitioner at regular intervals.

FORM No. 1.

LOED CHANCELLOR'S VISITORS' OFFICE,
 Royal Courts of Justice, Strand,
 London, W.C.;
 189

The sum allowed to you as Committee of the person of M
 for h maintenance as supplied to the
 Visitors by the Masters in Lunacy, and as ordered, is ["the whole income not
 exceeding £ per annum;" or "so much as shall be expended, not exceeding
 £ per annum;" or "£ per annum"].

I am directed by the Board of Visitors to request that you will be so good as
 to supply me with a statement of the manner in which this sum has been
 expended during the year from 1st January to 31st December, 189 .

I am,

Your obedient Servant,

I. M. WADE,
Chief Clerk.

Committee of the Person

The form of Statement to be filled up and returned is given on the other side
 of this letter. The Form itself must be returned; not a copy of it.

FORM No. 2.

THE LOED CHANCELLOR'S VISITORS' OFFICE,
 Royal Courts of Justice,
 Strand, London, W.C.;

189 .

THE BOARD OF VISITORS request that you will have the goodness to report
 upon the condition and treatment of M

filling up the answers to the inquiries in the enclosed
 paper, signing and returning the same to this Office.

If the patient has an habitual medical attendant, the concurrence of such
 attendant in the substance of the report is required either by affixing his
 Signature thereto, or by making such further report as he may think proper. If
 there be no habitual medical attendant, the report will be from yourself alone.
 You will in that case be pleased to mention that there is no habitual medical
 attendant.

I am,

Your obedient Servant,

I. M. WADE,
Chief Clerk.

MEM.—Immediate Notice of any change of the patient's residence, stating
 whether permanent or temporary, and if the latter the *precise duration* of such
 visit, should be sent to this Office, if possible, three days before it takes place,
 together with such particulars as to the new abode as will enable the Visitor to
 find it without difficulty.

REPORT AS TO THE CONDITION AND TREATMENT OF M
for

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- 1.—What is the patient's exact present }
residence ? }
- 2.—If *only on a visit to this place, say* }
so, and for how long. }
- 3.—What has been the state of the }
patient's bodily health during }
the past half-year ? }
- 4.—Has any change occurred in the }
patient's mental state? If so, }
mention what. }
- 5.—Has any change in the treatment }
been required? If so, mention }
what. }
- 6.—Add any other remarks you may }
have to make. }

Date.

Signature and full Address of Committee.

Signature of Medical Attendant.

APPENDIX B

LUNACY ACT, 1890*

[53 Vict. Ch. 5]

As amended by the Lunacy Act, 1891

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* Printed by Adlard and Son, Bartholomew Close, London, E.C., under the authority of Her Majesty's Stationery Office.

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CHAPTER 5

AN Act to consolidate certain of the Enactments respecting Lunatics. [29th March, 1890.]

[As amended by the Lunacy Act, 1891.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary

- | | |
|----------------|--|
| Short title. | 1. This Act may be cited as the Lunacy Act, 1890. |
| Extent of Act. | 2. Save as in this Act otherwise expressly provided, this Act shall not extend to Scotland or Ireland. |
| Commencement. | 3. This Act shall come into operation, save as in this Act otherwise expressly provided, on the first day of May, One thousand eight hundred and ninety. |

PART I

RECEPTION OF LUNATICS

Reception Orders on Petition

- | | |
|--|---|
| Private patients not found lunatic by inquisition to be received only under order of judicial authority. | 4.—(1.) Subject to the exceptions in this Act mentioned, a person, not being a pauper or a lunatic so found by inquisition, shall not be received and detained as a lunatic in an institution for lunatics, or as a single patient, unless under a reception order made by the judicial authority hereinafter mentioned. A relative of the person applying for an order under this section, or of the lunatic, or of the husband or wife of the lunatic, shall not be capable of making such order. |
| Forms 1, 2, 8. | (2.) The order shall be obtained upon a private application by petition, accompanied by a statement of particulars and by two medical certificates on separate sheets of paper. |
| Petition for reception order.
Form 1. | 5.—(1.) The petition shall be presented, if possible, by the husband or wife or by a relative of the alleged lunatic. If not so presented it shall contain a statement of the reasons why the petition is not so presented, and of the connection of the petitioner with the alleged lunatic, and the circumstances under which he presents the petition. |
| | (2.) No person shall present a petition unless he is at least twenty-one years of age, and has within fourteen days before the presentation of the petition personally seen the alleged lunatic. |
| | (3.) The petitioner shall in the petition undertake that he will personally, or by some one specially appointed by him, visit the patient once at least in every six months; and the undertaking shall be recited in the order. |
| Form 2. | (4.) The petition shall be signed by the petitioner and the statement of particulars by the person making the statement. |

6.—(1.) Upon the presentation of the petition the judicial authority shall consider the allegations in the petition and statement of particulars and the evidence of lunacy appearing by the medical certificates, and whether it is necessary for him personally to see and examine the alleged lunatic; and, if he is satisfied that an order may properly be made forthwith, he may make the same accordingly; or, if not so satisfied, he shall appoint as early a time as practicable, not being more than seven days after the presentation of the petition, for the consideration thereof; and he may make such further or other inquiries of or concerning the alleged lunatic as he may think fit. Notice of the time and place appointed for the consideration of the petition (unless personally given to the petitioner) shall be sent to the petitioner by post in a prepaid registered letter addressed to him at his address as given in the petition.

Procedure
upon petition
for a recep-
tion order.
Form 3.

(2.) The judicial authority, if not satisfied with the evidence of lunacy appearing by the medical certificates, may, if he thinks it necessary so to do, visit the alleged lunatic at the place where he may happen to be.

(3.) The petition shall be considered in private, and no one except the petitioner, the alleged lunatic (unless the judicial authority shall in his discretion otherwise order), any one person appointed by the alleged lunatic for that purpose, and the persons signing the medical certificates accompanying the petition, shall, without the leave of the judicial authority, be present at the consideration thereof.

(4.) At the time appointed for consideration of the petition the judicial authority may make an order thereon or dismiss the same, or, if he thinks fit, may adjourn the same for any period not exceeding fourteen days for further evidence or information, and he may give notice to such persons as he thinks fit of the adjourned consideration, and summon any persons to attend before him.

(5.) Every judicial authority and all persons admitted to be present at the consideration of any petition for a reception order, or otherwise having official cognizance of the fact that a petition has been presented, except the alleged lunatic and the person appointed by the alleged lunatic as aforesaid, shall be bound to keep secret all matters and documents which may come to his or their knowledge by reason thereof, except when required to divulge the same by lawful authority.

7.—(1.) If the petition is dismissed, the judicial authority shall deliver to the petitioner a statement in writing under his hand of his reasons for dismissing the same, and shall send a copy of such statement to the Commissioners, and shall also, where the alleged lunatic is detained under an urgency order, send notice by post or otherwise to the person in whose charge the alleged lunatic is, that the petition has been dismissed.

Dismissal
of petition.

(2.) Any judicial authority making or refusing a reception order shall, if so required by the Commissioners, give to them all such information as they may require as to the circumstances under which the order was made or refused.

(3.) The Commissioners may communicate such information as they think proper, on the dismissal of the petition or the release of the alleged lunatic, to him or to any person who may satisfy them that he is a proper person to receive the information.

(4.) If after a petition has been dismissed another petition is presented as to the same alleged lunatic, the person presenting such other petition, so far

as he has any knowledge or information with regard to the previous petition and its dismissal, shall state the facts relating thereto in his petition, and shall obtain from the Commissioners at his own expense, and present with his petition, a copy of the statement sent to them of the reasons for dismissing the previous petition, and, if he wilfully omits to comply with this subsection, he shall be guilty of a misdemeanor.

Right of
lunatic to be
examined
by judicial
authority.

8.—(1.) When a lunatic has been received as a private patient under an order of a judicial authority, without a statement in the order that the patient has been personally seen by such judicial authority, the patient shall have the right to be taken before or visited by a judicial authority, other than the judicial authority who made the order, unless the medical officer of the institution, or, in the case of a single patient, his medical attendant, within twenty-four hours after reception, in a certificate signed and sent to the Commissioners, states that the exercise of such right would be prejudicial to the patient.

Form 5.

Form 6.

Form 7.

(2.) Where no such certificate has been signed and sent, the manager of the institution in which the patient is, or the person having charge of him as a single patient, shall, within twenty-four hours after reception, give to the patient a notice in writing of his right under this section, and shall ascertain whether he desires to exercise the right; and if he, within seven days after his reception, expresses his desire to exercise the right, such manager or person shall procure him to sign a notice of such desire, and shall forthwith transmit it by post in a prepaid registered letter to the judicial authority, who is to exercise the jurisdiction under this section, or to the justice's clerk of the petty sessional division or borough, where the lunatic is, to be by him transmitted to such judicial authority, and the judicial authority shall thereupon arrange, as soon as conveniently may be, either to visit the patient or to have the patient brought before him by the manager or person as the judicial authority may think fit.

(3.) The judicial authority shall be entitled, if he desires so to do, to see the medical certificates and any other documents, upon the consideration of which the reception order was made, and shall after personally seeing the patient send to the Commissioners a report, and the Commissioners shall take such steps as may be necessary to give effect to the report.

(4.) For the purposes of this section the jurisdiction shall be exercised by any judicial authority having authority to act in the place where the person received is, and not being the judicial authority who made the reception order; and arrangements shall for that purpose from time to time be made amongst themselves by the persons having such authority as aforesaid.

(5.) If any manager of an institution for lunatics, or any person having charge of a single patient, omits to perform any duty imposed upon him by this section, he shall be guilty of a misdemeanor.

The Judicial Authority defined

Judicial
authority
defined.

9.—(1.) The powers of the judicial authority under this Act shall be exercised by a justice of the peace specially appointed as hereinafter provided, or a judge of county courts, or magistrate.

(2.) Every judicial authority shall, in the exercise of the jurisdiction conferred by this Act, have the same jurisdiction and power as regards the summoning and examination of witnesses, the administration of oaths, and

otherwise, as if he were acting in the exercise of his ordinary jurisdiction, and shall be assisted, if he so requires, by the same officers as if he were so acting, and their assistance under this Act shall be considered in fixing their remuneration.

(3.) A judge of county courts and magistrate shall not be required to exercise any powers under this Act so as to interfere with or delay the exercise of his ordinary jurisdiction.

10.—(1.) The justices of every county and quarter sessions borough shall annually appoint out of their own body as many fit and proper persons as they may deem necessary to exercise the powers conferred by this Act upon the judicial authority. In making such appointments the justices of every county shall have regard to the convenience of the inhabitants of each petty sessional division thereof. Appointment of justices to make reception orders.

(2.) The annual appointments under this section shall be made by justices of a county at their Michaelmas quarter sessions, and by justices of a borough at special sessions to be held in the month of October.

(3.) If in any year such appointments are not made, it shall be lawful for the Lord Chancellor, by writing under his hand, to make the same; and if, on any representation made to him that the number of justices so appointed for any county or borough is at any time insufficient, the Lord Chancellor is satisfied that such representation is well founded, he shall have power to appoint, by writing under his hand, any other justices of such county or borough to act, until the next Michaelmas quarter or special sessions, with the justices so appointed.

(4.) If in the case of a borough or place not having a separate quarter sessions, representation is made to the Lord Chancellor that public inconvenience is likely to result, unless power is given to the justices of such borough or place to exercise the powers conferred by this Act upon the judicial authority, it shall be lawful for the Lord Chancellor, from time to time, with or without a fresh representation, to appoint, by writing under his hand, one or more of the justices of such borough or place to exercise during such time as the Lord Chancellor thinks fit the powers aforesaid, together with any other specially appointed justices acting therein.

(5.) In the case of the death, absence, inability, or refusal to act of any justice appointed under this section, the justices of the county or borough, or the Lord Chancellor, as the case may be, may appoint a justice to act in his place. Such appointment may be made by justices of a county at any quarter sessions, and by justices of a borough at special sessions to be held at the same time as any quarter sessions.

(6.) All appointments of justices under this section shall be recorded by the clerk of the peace of the county or borough, or in the case of a borough or place not having a separate quarter sessions, by the clerk to the justices, and it shall be the duty of every such clerk to publish the names of the justices so appointed in each petty sessional division of the county and otherwise for the information of all persons interested. In the case of quarter sessions boroughs, the clerk to the justices making the appointment shall forthwith notify the same to the clerk of the peace of the borough.

[L. A., 1891, s. 25. If for the due administration of the Lunacy Acts, 1890 and 1891, in any union it appears to the Lord Chancellor desirable, he may by writing under his hand empower the chairman of the board of guardians to sign Power to confer powers of justice of the

peace on
member of
board of
guardians.

orders for the reception of persons as pauper lunatics in institutions for lunatics, and every order so signed shall have effect as if made by a justice of the peace under the principal Act.

24.—(1.) A justice of the peace specially appointed under section ten of the principal Act may exercise the powers of the judicial authority under that Act, notwithstanding that he may not have jurisdiction in the place where the lunatic or alleged lunatic is.

(2.) A judicial authority may, if he considers it expedient, transfer a petition for a reception order presented to him to any other judicial authority who is willing to receive the same, whether such other judicial authority has or has not jurisdiction in the place where the lunatic is, and such other judicial authority shall have the same powers as the judicial authority to whom the petition was presented would have had.

(3.) A reception order made after the passing of this Act shall not be invalid on the ground only that the justice of the peace who signed the order shall appear to have not been duly appointed under section ten of the principal Act, if the order is within fourteen days after its date approved and signed by a judicial authority.

(4.) The appointment at any time before or after the passing of this Act by the justices of a county or quarter sessions borough of justices to exercise the powers of the judicial authority under the principal Act shall not be invalid on the ground only that the appointment includes all the justices of the county or borough.

(5.) Every justice appointed under section ten of the Lunacy Acts Amendment Act, 1889, shall be deemed to have had power to exercise the jurisdiction conferred upon the judicial authority under the principal Act, and the jurisdiction of such justices and of any justices appointed or hereafter to be appointed under the principal Act shall be deemed to have continued and shall continue until a fresh appointment is made.]

Urgency Orders

Urgency
orders.

Forms 4, 8, 9.

11.—(1.) In cases of urgency where it is expedient, either for the welfare of a person (not a pauper) alleged to be a lunatic, or for the public safety, that the alleged lunatic should be forthwith placed under care and treatment, he may be received and detained in an institution for lunatics, or as a single patient upon an urgency order, made (if possible) by the husband or wife or by a relative of the alleged lunatic, accompanied by one medical certificate.

(2.) An urgency order may be signed before or after the medical certificate.

(3.) If an urgency order is not signed by the husband or wife or by a relative of the alleged lunatic, the order shall contain a statement of the reasons why the same is not so signed, and of the connection with the alleged lunatic of the person signing the order, and the circumstances under which he signs the same.

(4.) No person shall sign an urgency order unless he is at least twenty-one years of age, and has within two days before the date of the order personally seen the alleged lunatic.

(5.) An urgency order may be made as well after as before a petition for a reception order has been presented. An urgency order, if made before a petition has been presented, shall be referred to in the petition; and if made after the petition has been presented, a copy thereof shall forthwith be sent

by the petitioner to the judicial authority to whom the petition has been presented.

(6.) An urgency order shall remain in force for seven days from its date; or if a petition for a reception order is pending, then until the petition is finally disposed of.

(7.) An urgency order shall have subjoined or annexed thereto a statement Form 2. of particulars.

Reception after Inquisition

12. A lunatic so found by inquisition may be received in an institution for lunatics or as a single patient upon an order signed by the committee of the person of the lunatic, and having annexed thereto an office copy of the order appointing the committee, or if no such committee has been appointed, upon an order signed by a Master.

Lunatics so found by inquisition.

Summary Reception Orders

13.—(1.) Every constable, relieving officer, and overseer of a parish, who has knowledge that any person within the district or parish of the constable, relieving officer, or overseer, who is not a pauper and not wandering at large, is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, shall within three days after obtaining such knowledge give information thereof upon oath to a justice being a judicial authority under this Act.

Lunatics not under proper care and control or cruelly treated or neglected.

(2.) Any such justice upon the information on oath of any person whomsoever, that a person not a pauper, and not wandering at large, is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected as aforesaid, may himself visit the alleged lunatic, and shall, whether making such visit or not, direct and authorise any two medical practitioners whom he thinks fit to visit and examine the alleged lunatic and to certify their opinion as to his mental state, and the justice shall proceed in the same manner so far as possible, and have as to the alleged lunatic the same powers, as if a petition for a reception order had been presented by the person by whom the information with regard to the alleged lunatic has been sworn.

(3.) If upon the certificates of the medical practitioners who examine the alleged lunatic, or after such other and further inquiry as the justice thinks necessary, he is satisfied that the alleged lunatic is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, and that he is a proper person to be taken charge of and detained under care and treatment, the justice may by order direct the lunatic to be received and detained in any institution for lunatics to which, if a pauper, he might be sent under this Act, and the constable, relieving officer, or overseer upon whose information the order has been made, or any constable whom the justice may require so to do, shall forthwith convey the lunatic to the institution named in the order.

Form 15.

[L. A., 1891, sec. 3. A lunatic sent to an institution for lunatics under section thirteen or sixteen of the principal Act shall be classified as a pauper, until it is ascertained that he is entitled to be classified as a private patient.]

Notice to be given of pauper lunatic who ought to be sent to an asylum.

14.—(1.) Every medical officer of a union who has knowledge that a pauper resident within the district of the officer is or is deemed to be a lunatic and a proper person to be sent to an asylum, shall, within three days after obtaining such knowledge, give notice thereof in writing to the relieving officer of the district, or, if there is no such officer, to an overseer of the parish where the pauper resides.

(2.) Every relieving officer and every overseer of a parish of which there is no relieving officer, who respectively have knowledge, either by notice from a medical officer or otherwise, that any pauper resident within the district or parish of the relieving officer or overseer is deemed to be a lunatic, shall, within three days after obtaining such knowledge, give notice thereof to a justice having jurisdiction in the place where the pauper resides.

(3.) A justice, upon receiving such notice, shall by order require the relieving officer or overseer giving the notice, to bring the alleged lunatic before him or some other justice having jurisdiction in the place where the pauper resides at such time and place within three days from the time of the notice to the justice as shall be appointed by the order.

Lunatic wandering at large to be brought before a justice.

15.—(1.) Every constable and relieving officer and every overseer of a parish who has knowledge that any person (whether a pauper or not) wandering at large within the district or parish of the constable, relieving officer, or overseer is deemed to be a lunatic, shall immediately apprehend and take the alleged lunatic, or cause him to be apprehended and taken, before a justice.

(2.) Any justice, upon the information upon oath of any person that a person wandering at large within the limits of his jurisdiction is deemed to be a lunatic, may by order require a constable, relieving officer, or overseer of the district or parish where the alleged lunatic is, to apprehend him, and bring him before the justice making the order, or any justice having jurisdiction where the alleged lunatic is.

Lunatic brought before a justice may be sent to an institution for lunatics.

16.—The justice before whom a pauper alleged to be a lunatic or an alleged lunatic wandering at large is brought under this Act shall call in a medical practitioner, and shall examine the alleged lunatic, and make such inquiries as he thinks advisable, and if upon such examination or other proof the justice is satisfied in the first-mentioned case that the alleged lunatic is a lunatic and a proper person to be detained, and, in the secondly mentioned case, that the alleged lunatic is a lunatic, and was wandering at large, and is a proper person to be detained, and if in each of the foregoing cases the medical practitioner who has been called in signs a medical certificate with regard to the lunatic, the justice may by order direct the lunatic to be received and detained in the institution for lunatics named in the order, and the relieving officer, overseer, or constable who brought the lunatic before the justice, or in the case of a lunatic wandering at large, any constable who may by the justice be required so to do, shall forthwith convey the lunatic to such institution.

Form 8.

Form 12.

[As to classification of lunatic so received see L. A., 1891, sec. 3, printed under sec. 13, *supra*.]

Power to examine alleged lunatic at his own abode or elsewhere.

17.—Where, under this Act, notice has been given to, or an information upon oath laid before a justice that a pauper resident within the limits of his jurisdiction is deemed to be a lunatic, and a proper person to be sent to an asylum, or that a person, whether a pauper or not, wandering at large within

the limits aforesaid, is deemed to be a lunatic, such justice may examine the alleged lunatic at his own house or elsewhere, and may proceed in all respects as if the alleged lunatic had been brought before him.

18.—A justice shall not sign an order for the reception of a person as a pauper lunatic into an institution for lunatics, or workhouse, unless he is satisfied that the alleged pauper is either in receipt of relief, or in such circumstances as to require relief for his proper care. If it appears by the order that the justice is so satisfied, the lunatic shall be deemed to be a pauper chargeable to the union, county, or borough properly liable for his relief. A person who is visited by a medical officer of the union, at the expense of the union, is, for the purposes of this section, to be deemed to be in receipt of relief.

When lunatic may be treated as a pauper.

19.—(1.) A justice making an order for the reception of a lunatic otherwise than upon petition, in this Act called a "summary reception order," may suspend the execution of the order for such period not exceeding fourteen days as he thinks fit, and in the meantime may give such directions or make such arrangements for the proper care and control of the lunatic as he considers proper.

Suspension of removal under reception order.

(2.) If a medical practitioner who examines a lunatic as to whom a summary reception order has been made, certifies in writing that the lunatic is not in a fit state to be removed, the removal shall be suspended until the same or some other medical practitioner certifies in writing that the lunatic is fit to be removed, and every medical practitioner who has certified that the lunatic is not in a fit state to be removed shall, as soon as in his judgment the lunatic is in a fit state to be removed, be bound to certify accordingly.

20. If a constable, relieving officer, or overseer is satisfied that it is necessary for the public safety or the welfare of an alleged lunatic with regard to whom it is his duty to take any proceedings under this Act, that the alleged lunatic should, before any such proceedings can be taken, be placed under care and control, the constable, relieving officer, or overseer may remove the alleged lunatic to the workhouse of the union in which the alleged lunatic is, and the master of the workhouse shall, unless there is no proper accommodation in the workhouse for the alleged lunatic, receive and relieve, and detain the alleged lunatic therein, but no person shall be so detained for more than three days, and before the expiration of that time the constable, relieving officer, or overseer shall take such proceedings with regard to the alleged lunatic as are required by this Act.

Removal of lunatic to workhouse in urgent cases.

21.—(1.) In any case where a summary reception order might be made, any justice, if satisfied that it is expedient for the welfare of the lunatic, or for the public safety, that the lunatic should forthwith be placed under care and control, and if it appears to him that there is proper accommodation for the lunatic in the workhouse of the union in which the lunatic is, may make an order for taking the lunatic to and receiving him in that workhouse.

Temporary removal of lunatic to workhouse under order of justice.

(2.) In any case where a summary reception order has been made, an order under this section may be made to provide for the detention of the lunatic until he can be removed.

(3.) An order under this section shall not authorise the detention of a lunatic in a workhouse for more than fourteen days, after which period such detention shall not be lawful, except in accordance with the provisions of this Act as to the detention of lunatics in workhouses.

(4.) An order under this section may be made by any justice having jurisdiction in the place where the lunatic is.

Power to allow a relation or friend to take charge of a lunatic.

22. In the case of a lunatic as to whom a summary reception order may be made, nothing in this Act shall prevent a relation or friend from retaining or taking the lunatic under his own care if a justice having jurisdiction to make the order, or the visitors of the asylum in which the lunatic is or is intended to be placed, shall be satisfied that proper care will be taken of the lunatic.

Provisions as to relieving officers.

[L. A., 1891, sec. 2.—(1.) A constable, relieving officer, or overseer, whose duty it is, under the principal Act, to convey a lunatic to or from an institution for lunatics, may make proper arrangements for the performance of the duty by some other person or persons.

(2.) Where in a union there are two or more relieving officers, and the guardians, with the sanction of the Local Government Board, direct one relieving officer to discharge throughout the union the duties of a relieving officer, in respect of lunatics, every other relieving officer in the union shall inform the officer so directed of any case of a lunatic, with which it would otherwise devolve upon such other relieving officer to deal, and it shall be the duty of the relieving officer receiving such information to deal with the case, and the other relieving officer shall be discharged from any further duty in the matter.]

Reception Order by Two Commissioners

Commissioners may send pauper lunatic to an institution for lunatics.

23.—(1.) Any two or more Commissioners may visit a pauper lunatic or alleged lunatic not in an institution for lunatics, or workhouse, and may, if they think fit, call in a medical practitioner.

Form 8.

(2.) If the medical practitioner signs a medical certificate with regard to the lunatic, and the Commissioners are satisfied that the pauper is a lunatic, and a proper person to be detained, they may by order direct the lunatic to be received in an institution for lunatics, and the relieving officer of the district or any constable who may by them be required so to do shall forthwith convey the lunatic to such institution.

Lunatics in Workhouses

Lunatics in workhouses.

24.—(1.) Except in the cases mentioned in this Act, no person shall be allowed to remain in a workhouse as a lunatic unless the medical officer of the workhouse certifies in writing—

Form 10.

- (a) that such person is a lunatic, with the grounds for the opinion; and
- (b) that he is a proper person to be allowed to remain in a workhouse as a lunatic; and
- (c) that the accommodation in the workhouse is sufficient for his proper care and treatment, separate from the inmates of the workhouse not lunatics, unless the medical officer certifies that the lunatic's condition is such that it is not necessary for the convenience of the lunatic or of the other inmates that he should be kept separate.

(2.) A certificate under this section shall be sufficient authority for detaining the lunatic therein named against his will in the workhouse for fourteen days from its date.

Form 11.

(3.) No lunatic shall be detained against his will or allowed to remain in a workhouse for more than fourteen days from the date of a certificate under this section without an order under the hand of a justice having jurisdiction in the place where the workhouse is situate.

(4.) The order in the last preceding sub-section mentioned may be made upon the application of a relieving officer of the union to which the workhouse belongs, supported by a medical certificate under the hand of a medical practitioner, not being an officer of the workhouse, and by the certificate under the hand of the medical officer of the workhouse hereinbefore mentioned. Forms 8, 10.

(5.) The guardians of the union to which the workhouse belongs shall pay such reasonable remuneration as they think fit to the medical practitioner who, not being an officer of the workhouse, examines a person for the purpose of a certificate under this section.

(6.) If, in the case of a lunatic being in a workhouse, the medical officer thereof does not sign such certificate as in sub-section one of this section mentioned, or if at or before the expiration of fourteen days from the date of the certificate an order is not made under the hand of a justice for the detention of the lunatic in the workhouse, or if, after such an order has been made, the lunatic ceases to be a proper person to be detained in a workhouse, the medical officer of the workhouse shall forthwith give notice in writing to a relieving officer of the union to which the workhouse belongs, and thereupon the like proceedings shall be taken by the relieving officer and all other persons for the purpose of removing the lunatic to an asylum, and within the same time, as by this Act provided in the case of a pauper deemed to be a lunatic and a proper person to be sent to an asylum, and, pending such proceedings, the lunatic may be detained in the workhouse.

(7.) In the case of a lunatic in an asylum provided for reception and relief of the insane under the Metropolitan Poor Act, 1867, notices to be given to and proceedings to be taken by a relieving officer shall be given to and taken by one of the officers of the asylum to be nominated for the purpose by the managers of the asylum district. 30 & 31 Vict.,
c. 6.

(8.) As regards every pauper in a workhouse at the date of the commencement of this Act, as to whom a certificate has been signed under section twenty of the Lunacy Acts Amendment Act, 1862, no certificate or order of a justice under this section shall be required. 25 & 26 Vict.,
c. 111.

[L. A., 1891, sec. 4.—(1.) Every pauper suffering from mental disease in a workhouse at the commencement of the principal Act, as to whom a report had before the commencement of the principal Act been made under section twenty-two of the Poor Law Amendment Act, 1867, may be detained in the workhouse against his will without an order under section twenty-four of the principal Act. 30 & 31 Vict.,
c. 106.

(2.) The medical superintendent of an asylum provided under the Metropolitan Poor Act, 1867, shall not be required in any certificate under sub-section one of section twenty-four of the principal Act, or under this Act, to certify to the effect in sub-clause (c) of that sub-section mentioned, and upon the transfer from a workhouse to an asylum provided under the Metropolitan Poor Act, 1867, of a lunatic, with regard to whom a certificate or order under the said section twenty-four made while he was in the workhouse is in force, no further certificate or order shall be required for the detention of the lunatic in the asylum.] 30 Vict., c. 6.

[L. A., 1891, sec. 5. There shall be attached to every order made by a justice under section twenty-four of the principal Act the medical certificates on which such order is founded.]

25. Where a pauper lunatic is discharged from an institution for lunatics, and the medical officer of the institution is of opinion that the lunatic has Power to
send dis-
charged

pauper not recovered to a workhouse.

not recovered, and is a proper person to be kept in a workhouse as a lunatic, the medical officer shall certify such opinion, and the lunatic may thereupon be received and detained against his will in a workhouse without further order if the medical officer of the workhouse certifies in writing that the accommodation in the workhouse is sufficient for the lunatic's proper care and treatment, separate from the inmates of the workhouse not lunatics, or that the lunatic's condition is such that it is not necessary for the convenience of the lunatic, or of the other inmates, that he should be kept separate.

Chronic lunatics may be received in workhouses in certain cases.

26.—(1.) The visitors of any asylum may, with the consent of the Local Government Board and the Commissioners, and subject to such regulations as they respectively prescribe, make arrangements with the guardians of any union for the reception into the workhouse of any chronic lunatics, not being dangerous, who are in the asylum and have been selected and certified by the manager of the asylum as proper to be removed to the workhouse.

(2.) Every lunatic received in a workhouse under this section shall, while he remains there, continue a patient on the books of the asylum for the purposes of this Act so far as it relates to lunatics removed to asylums.

Institutions in which Lunatics may be received

Institutions to which lunatics may be removed.

27.—(1.) Subject to the restrictions in this section mentioned, every summary reception order, and every reception order made by two or more Commissioners, may authorise the reception of the lunatic named in the order not only into an asylum of the county or borough in which the place from which the lunatic is sent is situate, but also into any other institution for lunatics.

(2.) A lunatic shall not under any such order be sent elsewhere than to an asylum of the county or borough in which the place from which he is sent is situate, unless there is no such asylum, or there is a deficiency of room, or there are some special circumstances by reason whereof the lunatic cannot conveniently be taken to such asylum, and the deficiency of room or special circumstances shall be stated in the order.

(3.) A pauper lunatic shall not be received under an order into any asylum other than an asylum belonging wholly or in part to the county or borough in which the place from which the lunatic is sent or the parish in which he is adjudged to be settled is situate, unless there is a subsisting contract for the reception of lunatics of such county or borough therein, or such borough otherwise contributes to the asylum into which the pauper is to be received, except the order is endorsed by a visitor of that asylum.

[L. A., 1891, sec. 6. Where a workhouse is situate in a county which does not include the union to which the workhouse belongs, a summary reception order made by a justice of the county in which the workhouse is situate may order a lunatic in the workhouse to be received in any asylum in which pauper lunatics chargeable to the union, to which the workhouse belongs, may legally be received.]

(4.) The manager of a hospital or licensed house shall not be bound to receive any lunatic under any such order except in pursuance of a subsisting contract.

Requirements of Reception Orders and Medical Certificates

Medical certificates.

28.—(1.) Every medical certificate under this Act shall be made and signed by a medical practitioner.

(2.) Every medical certificate upon which a reception order is founded shall state the facts upon which the certifying medical practitioner has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others; and a reception order shall not be made upon a certificate founded only upon facts communicated by others.

(3.) The medical certificate accompanying an urgency order shall contain a statement that it is expedient for the welfare of the alleged lunatic or for the public safety that he should be forthwith placed under care and treatment, with the reasons for such statement. Form 9.

(4.) Every medical certificate made under and for the purposes of this Act shall be evidence of the facts therein appearing, and of the judgment therein stated to have been formed by the certifying medical practitioners on such facts, as if the matters therein appearing had been verified on oath.

29.—(1.) A reception order shall not be made unless the medical practitioner who signs the medical certificate, or where two certificates are required each medical practitioner who signs a certificate, has personally examined the alleged lunatic in the case of an order upon petition not more than seven clear days before the date of the presentation of the petition, and in all other cases not more than seven clear days before the date of the order. Time and manner of medical examination of lunatic.

(2.) Where two medical certificates are required, a reception order shall not be made unless each medical practitioner signing a certificate has examined the alleged lunatic separately from the other.

(3.) In the case of an urgency order the lunatic shall not be received under the order unless it appears by the medical certificate accompanying the order that the certifying medical practitioner has personally examined the alleged lunatic not more than two clear days before his reception.

30. A medical certificate accompanying a petition for a reception order or accompanying an urgency order shall not be signed by the petitioner or person signing the urgency order, or by the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner or assistant of such petitioner or person. Persons disqualified for signing certificates.

31. One of the medical certificates accompanying a petition for a reception order shall, whenever practicable, be under the hand of the usual medical attendant, if any, of the alleged lunatic. If for any reason it is not practicable to obtain a certificate from such usual medical attendant, the reason shall be stated in writing by the petitioner to the judicial authority to whom the petition is presented, and such statement shall be deemed to be part of the petition. Usual medical attendant to sign medical certificate in case of private patient if possible.

32.—(1.) No person shall be received or detained as a lunatic in any institution for lunatics, or as a single patient, where any certificate accompanying the reception order has been signed by any of the following persons: Patients not to be received under certificates by interested persons.

(a.) The manager of the institution or the person who is to have charge of the single patient:

(b.) Any person interested in the payments on account of the patient:

(c.) Any regular medical attendant in the institution:

(d.) The husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, or the partner or assistant of any of the foregoing persons.

(2.) Neither of the persons signing the medical certificates in support of a petition for a reception order shall be the father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, or the partner or assistant of the other of them.

(3.) No person shall be received as a lunatic in a hospital under an order made on the application of, or under a certificate signed by, a member of the managing committee of the hospital.

Commissioners and visitors not to sign certificates.

33.—A medical practitioner who is a Commissioner or a visitor shall not sign any certificate for the reception of a patient into a hospital or licensed house unless he is directed to visit the patient by a judicial authority under this Act, or by the Lord Chancellor, or a Secretary of State, or a committee appointed by the judge in lunacy.

Amendment of orders and certificates.

34.—(1.) If an order or certificate for the reception of a lunatic is, after such reception, found to be in any respect incorrect or defective, such order or certificate may, within fourteen days next after such reception, be amended by the person who signed the same. No amendment shall be allowed unless the same receives the sanction of the Commissioners, or of some one of them, and (in the case of a private patient) the consent of the judicial authority by whom the order for the reception of the lunatic may have been signed.

(2.) If the Commissioners deem any such certificate to be incorrect or defective, they may, by a direction in writing, addressed to the manager of the institution for lunatics, or to the person having the charge of a single patient, require the same to be amended by the person who signed the same, and if the same be not duly amended to their satisfaction within fourteen days next after the reception of the patient, the Commissioners, or any two of them, may, if they think fit, make an order for the patient's discharge.

(3.) Every order and certificate amended under this section shall take effect as if the amendment had been contained therein when it was signed.

Authority for reception.

35.—(1.) A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorised by him, or in the case of an order not made upon petition for the person authorised so to do by the person making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order.

(2.) In the case of a reception order made upon petition the order, together with the petition, statement of particulars, and medical certificates upon which the order was made, shall be delivered or sent by post to the person on whose petition the order was made, and shall by him or his agent be delivered to the manager of the institution for lunatics in which, or to the person by whom, the lunatic is to be received.

Fresh order and certificates not to be required in certain cases.

36.—(1.) Where a reception order has been made, and the execution of the order has been suspended, or the lunatic named in the order has been temporarily taken to a workhouse under the provisions of this Act, he may be received in the institution for lunatics named in the order at any time within fourteen days after the date of the reception order.

(2.) If the removal of the lunatic has been suspended by reason of a medical certificate that the lunatic is not in a fit state for removal, the lunatic may be received in the institution for lunatics named in the order within three days

after the date of a medical certificate that the lunatic is in a fit state to be removed.

(3.) In all other cases a reception order shall cease to be of any force unless the lunatic has been received thereunder before the expiration of seven clear days from its date.

37.—(1.) An order for the reception of a patient as a pauper shall extend to authorise his detention though it may afterwards appear that he is entitled to be classified as a private patient, and an order required for the reception of a private patient shall authorise his detention, although it may afterwards appear that he ought to be classified as a pauper patient.

Order and certificate to remain in force in certain cases.

(2.) If a patient is removed temporarily under the provisions of this Act from the place in which he is confined, or is transferred from one place of confinement to another, the original order and certificate or certificates upon which he was received shall remain in force.

Duration of Reception Orders

38.—(1.) Every reception order dated after or within three months before the commencement of this Act shall expire at the end of one year from its date, and any such order dated three months or more before the commencement of this Act shall expire at the end of one year after the commencement of this Act unless such orders respectively are continued as hereinafter provided.

Duration of reception orders.

(2.) In the case of any institution for lunatics the Commissioners may by order under their seal direct that the reception orders of patients detained therein shall, unless continued as hereinafter provided, expire on any quarterly day next after the days on which the orders would expire under the last preceding sub-section.

(3.) An order for the removal of a patient from one custody to another shall not be deemed to be a reception order within this section, but the patient who is removed shall after such removal be deemed to be detained under the original reception order as a lunatic, and such order shall expire in accordance with the provisions of this section unless continued as hereinafter provided.

[(4.) A reception order shall remain in force for a year after the date by this Act or by an order of the Commissioners appointed for it to expire, and thereafter for two years, and thereafter for three years, and after the end of such periods of one, two, and three years for successive periods of five years, if not more than one month nor less than seven days before the expiration of the period at the end of which, as fixed by this Act or by an order of the Commissioners under sub-section two, the order would expire, and of each subsequent period of one, two, three, and five years respectively, a special report of the medical officer of the institution or of the medical attendant of the single patient as to the mental and bodily condition of the patient with a certificate under his hand certifying that the patient is still of unsound mind and a proper person to be detained under care and treatment is sent to the Commissioners (L. A., 1891, s. 7)].

(5.) The person sending the special report shall give to the Commissioners such further information concerning the patient to whom the special report relates as they require.

(6.) If in the opinion of the Commissioners the special report does not justify the accompanying certificate, then—

- (a.) In the case of a patient in a hospital or licensed house or under care as a single patient, the Commissioners shall make further inquiry, and if dissatisfied with the result they or any two of them may by order direct his discharge:
- (b.) In the case of a patient in an asylum, the Commissioners shall send a copy of the report, with any other information in their possession relating to the case, to the clerk to the visiting committee of the asylum, and the committee, or any three of them, shall thereupon investigate the case, and may discharge the patient or give such directions respecting him as they may think proper.
- (7.) The manager of any institution for lunatics, and any person having charge of a single patient, who detains a patient after he has knowledge that the order for his reception has expired, shall be guilty of a misdemeanor.
- (8.) The special reports and certificates under this section may include and refer to more than one patient.
- (9.) A certificate under the hand of the Secretary to the Commissioners that an order for reception has been continued to the date therein mentioned shall be sufficient evidence of the fact.
- (10.) This section shall not apply to lunatics so found by inquisition.

PART II

CARE AND TREATMENT

Reports after Reception

Reports upon
and visits to
private
patients.

39.—(1.) The medical officer of every institution for lunatics, and the medical attendant of every single patient shall at the expiration of one month after the reception of a private patient prepare and send to the Commissioners a report as to the mental and bodily condition of the patient, in such form as the Commissioners direct.

(2.) The medical officer of every house licensed by justices shall also at the same time send a copy of such report to the clerk of the visitors of licensed houses in the county or borough where the house is situate, to be by him laid before the visitors.

(3.) The Commissioners, after receiving the report upon any patient in a licensed house within their immediate jurisdiction, shall make arrangements for a visit being paid as soon as conveniently may be to the patient by one or more of the Commissioners; and the Commissioner or Commissioners so visiting shall report to the Commissioners whether the detention of the patient is or is not proper.

(4.) The visitors, after receiving the report, shall, in every case of a private patient in a licensed house in the county or borough for which the visitors are appointed, make arrangements for a visit being paid by the medical visitor (either alone or with one or more of the other visitors) to the patient therein named for such purpose as aforesaid, as soon as conveniently may be; and if on such visit there appears to be any doubt as to the propriety of the detention of the patient, such visitor or visitors shall forthwith report the same in writing to the Commissioners, who shall thereupon make all such further inquiries as may be necessary to satisfy themselves

whether the patient is properly detained as a lunatic, or whether he ought to be discharged, or whether the case ought to be reported to the Lord Chancellor with a view to an inquisition.

(5.) In the case of a single patient the Commissioners, after receiving the report, shall either make arrangements for a visit being paid as soon as conveniently may be to the patient therein named by one or more of the Commissioners, or, if no Commissioner is available, shall cause a copy of the report to be sent to a medical visitor for the county or borough in which the single patient resides, or to some other competent person, and shall direct him to visit the patient therein named as soon as conveniently may be. The Commissioner or Commissioners, or other person visiting the patient, shall report to the Commissioners whether his detention is or is not proper.

(6.) The person directed to visit a single patient under the last preceding sub-section shall for that purpose have all the powers of a Commissioner, and the Commissioners may, with the consent of the Treasury, pay to him such reasonable remuneration for his services as they think fit out of any funds which may be provided by Parliament to defray the general expenses of the Commissioners.

(7.) In the case of a private patient in an asylum or hospital the Commissioners, after receiving the report, shall either make arrangements for a visit being paid, as soon as conveniently may be, to the patient therein named by one or more of the Commissioners, who shall report to the Commissioners whether the detention of the patient is or is not proper; or the Commissioners shall send a copy of the report to the clerk to the visiting committee of the asylum or to the managing committee of the hospital, and one or more members of the committee shall thereupon, as soon as conveniently may be, visit the patient named in the report and report to the committee whether his detention is or is not proper, and the committee, or any three of them, may, upon consideration of such last-mentioned report, by writing under their hands discharge the patient or give such directions with regard to him as they think fit.

(8.) If within a month after the reception of any private patient, the institution for lunatics or house into which he was received is visited by one or more Commissioners or by any visitors, and such patient is there seen and examined by him or them, and the propriety of his detention reported on in like manner as by this section provided, no special visit shall necessarily be paid to such patient after receipt of any such report.

(9.) If the Commissioners in any case under this section determine that a patient ought to be discharged they may make an order for his discharge.

[L. A., 1891, sec. 8. Section 39 of the Principal Act shall not apply to lunatics received under a Removal Order or to lunatics so found by inquisition.]

Mechanical Restraint

40.—(1.) Mechanical means of bodily restraint shall not be applied to any lunatic unless the restraint is necessary for purposes of surgical or medical treatment, or to prevent the lunatic from injuring himself or others. Mechanical means of restraint.

(2.) In every case where such restraint is applied a medical certificate shall, as soon as it can be obtained, be signed, describing the mechanical means used, and stating the grounds upon which the certificate is founded.

(3.) The certificate shall be signed, in the case of a lunatic in an institution for lunatics or workhouse, by the medical officer thereof, and in the case of a single patient by his medical attendant.

(4.) A full record of every case of restraint by mechanical means shall be kept from day to day; and a copy of the records and certificates under this section shall be sent to the Commissioners at the end of every quarter.

(5.) In the case of a workhouse, the record to be kept under this section shall be kept by the medical officer of the workhouse, and the copies of records and certificates to be sent shall be sent by the clerk to the guardians.

(6.) In the application of this section "mechanical means" shall be such instruments and appliances as the Commissioners may, by regulations to be made from time to time, determine.

(7.) Any person who wilfully acts in contravention of this section shall be guilty of a misdemeanor.

Correspondence

Letters of patients.

41.—(1.) The manager of every institution for lunatics, and every person having charge of a single patient, shall forward unopened all letters written by any patient and addressed to the Lord Chancellor or any Judge in Lunacy, or to a Secretary of State, or to the Commissioners, or any Commissioner, or to the person who signed the order for the reception of the patient, or on whose petition such order was made, or to the Chancery Visitors or any Chancery Visitor or to any other visitors or visitor, or to the visiting committee, or any member of the visiting committee of the institution, in which any patient writing such letters may be, and may also at his discretion forward to its address any other letter if written by a private patient.

(2.) Every manager of an institution for lunatics, and every person having charge of a single patient who makes default in complying with the obligation imposed on him by this section shall for each offence be liable to a penalty not exceeding twenty pounds.

Notices

Notices as to letters and interviews.

42.—(1.) Whenever the Commissioners so direct, there shall, unless there is no private patient therein, be posted up in every institution for lunatics printed notices setting forth—

(a) The right of every private patient to have any letter written by him forwarded in pursuance of the last preceding section;

(b) The right of every private patient to request a personal and private interview with a visiting Commissioner or visitor at any visit which may be made to the institution.

(2.) The notices shall be posted in the institution, so that every private patient may be able to see the same.

(3.) The visiting Commissioners or visitors may give directions as to the places in which such notices are to be posted.

(4.) If the manager of any institution for lunatics makes default in posting such notices, or does not within ten days carry out any directions as to such notices given by the visiting Commissioners or visitors, he shall for each offence be liable to a penalty not exceeding twenty pounds.

Medical Attendance

43.—(1.) A medical practitioner who has signed a certificate upon which a reception order in the case of a private patient has been made shall not be the regular professional attendant of the patient while detained under the order.

Persons disqualified to be medical attendants of lunatic.

(2.) A medical practitioner, who is a Commissioner or visitor, shall not professionally attend upon a patient in a hospital or licensed house, unless he is directed to visit the patient by the person on whose petition the reception order was made, or by the Lord Chancellor, or a Secretary of State, or a committee appointed by the Judge in Lunacy.

44.—(1.) The Commissioners may by order direct how often any single patient is to be visited by a medical practitioner.

Medical attendance on single patients.

(2.) Until any such order is made, every single patient shall be visited once at least in every two weeks by a medical practitioner not deriving, and not having a partner, father, son, or brother who derives any profit from the charge of the patient.

(3.) Any two Commissioners may direct that the medical attendant of a single patient shall cease to act in that capacity, and that some other person be employed in his place.

(4.) If a person having charge of a single patient fails to give effect to any direction of the Commissioners under this section, he shall be guilty of a misdemeanour.

(5.) This section shall not apply to lunatics so found by inquisition.

45. The Commissioners may at any time require from the medical attendant of a single patient a report in writing as to the patient, in such form and specifying such particulars as the Commissioners direct, and such report shall be in addition to any periodical reports required to be sent to the Commissioners.

Special report as to single patient.

Power to take more than one Lunatic as a Single Patient

46. In the case of any person having charge of a single patient, if the Commissioners are satisfied that it is desirable under special circumstances and for the interest of the patient that another patient or more than one other should reside in the same house, that person may, with the approval of the Commissioners, receive such other patient or patients on the same terms and conditions in all respects as if each of them were a single patient.

Power to take more than one person on same conditions as a single patient.

Visits of Friends

47.—(1.) Any one of the Commissioners, as to patients confined in an institution for lunatics or other place (not being a gaol) authorised to be visited by the Commissioners, and any one of the visitors of a licensed house, as to patients confined in such house, may at any time give an order in writing under his hand for the admission to any patient of any relation or friend, or of any medical or other person whom any relation or friend desires to be admitted to him.

Admission to patients of friends, relations, and others.

(2.) The order of admission may be either for a single admission, or for an admission for a limited number of times, or for admission generally at all reasonable times, and with or without any restriction as to the presence of an attendant or otherwise.

(3.) If the manager or principal officer of any institution or place refuses,

prevents, or obstructs the admission to any patient of any person who produces an order of admission, he shall for every offence be liable to a penalty not exceeding twenty pounds.

Appointment of Substitute for Person who applied for Reception Order.

Power to appoint substitute for the person who applied for reception order.

48.—(1.) The Commissioners may by order substitute for the person upon whose petition a reception order was made, and either during the life of such person or after his death, any other person who is willing to undertake the duties and responsibilities of the petitioner.

(2.) As from the date of an order by the Commissioners under this section the substituted person shall be subject to all the obligations and may exercise all the powers and authorities in relation to the patient of the person for whom he is substituted.

(3.) The substitution shall not release the petitioner or his estate from any liabilities already incurred by him.

(4.) An order under this section may be made with or without the consent of the petitioner, but in the last-mentioned case the order shall not be made during his life until fourteen days after the Commissioners have given to him notice in writing of their intention to take into consideration the advisability of making an order under this section, and of the name of the person proposed to be substituted.

(5.) Within fourteen days after receipt of the notice the person to whom the notice is given may lay before the Commissioners a statement in writing of his reasons why an order under this section should not be made, or he may appear in person before the Commissioners at such time and place and subject to such restrictions as the Commissioners may appoint for the purpose of stating such reasons. The Commissioners shall, upon consideration of such statement, or, if no statement is made, at their own discretion, finally determine the matter, and make or decline to make the order, as they may think fit.

(6.) A notice under this section may be sent by post to the last known address of the petitioner.

Examination of Lunatic

Provision for any person to apply to have patient examined.

49. An order for the examination by two medical practitioners, authorised by the Commissioners, of any person detained as a lunatic in any institution for lunatics, or as a single patient, may be obtained from the Commissioners upon the application of any person, whether a relative or friend or not, who satisfies the Commissioners that it is proper for them to grant such order; and on production to the Commissioners of the certificates of the medical practitioners so authorised, certifying that after two separate examinations with at least seven days intervening between the first and the second examination, they are of opinion that the patient may, without risk or injury to himself or the public, be discharged, the Commissioners may order the patient to be discharged at the expiration of ten days from the date of the order.

Inquiries as to Property

Inquiries as to property.

50.—(1.) Where any person is detained as a lunatic, and the Commissioners represent to the Lord Chancellor that it is desirable that the extent and nature of his property, and its application, should be ascertained, the Lord Chan-

cellor may, if he think fit, through the Masters, require that the person upon whose petition the reception order under which the lunatic is detained was made, or other the person paying for the care and maintenance of the lunatic, or having the management of his property, shall transmit to the Lord Chancellor a statement in writing, to the best of his knowledge, of the particulars of the property of the lunatic and of its application.

(2.) The Commissioners may also, whenever they think it expedient, make inquiries as to the property of any person detained as a lunatic.

Application for a Search

51.—(1.) If any person applies to a Commissioner in order to be informed whether any particular patient is confined in any institution for lunatics, or other place subject to the visitation of the Commissioners, the Commissioner, if he thinks fit, may sign an order to the secretary of the Commissioners, who shall search amongst the returns made to the Commissioners, whether the person inquired after is or has been within the last twelve months confined.

Power for a Commissioner or visitor to direct a search whether a particular person has been confined.

(2.) If it appears that the patient is or has been so confined, the secretary shall deliver to the applicant a statement in writing, specifying the situation of the institution or place in which the patient appears to be or to have been confined, and also (so far as the secretary can ascertain the same from any register or return in his possession) the name of the manager or principal officer of the institution or place, and the date of admission, and (in case of the patient's removal or discharge) the date of his removal or discharge.

(3.) If any such application is made to a visitor as to any licensed house within his jurisdiction, the visitor may make the like order upon the clerk to the visitors, who shall make search among the returns made to him, and deliver to the applicant the like statement as to any such licensed house as the secretary of the Commissioners is by this section required to make and deliver.

(4.) The applicant shall pay to the person required to make a search under this section such sum not exceeding seven shillings as the Commissioners or visitors fix.

Diet

52.—(1.) The visiting Commissioners may determine and regulate the diet of the pauper patients in any hospital or licensed house.

Diet of patients.

(2.) The visitors of a licensed house shall have the like power as to that house, subject, nevertheless, to any direction the visiting Commissioners may give.

Employment of Males in care of Females

53. It shall not be lawful to employ any male person in any institution for lunatics in the personal custody or restraint of any female patient, and any person employing a male person contrary to this section shall be liable to a penalty not exceeding twenty pounds. Provided that this section shall not extend to prohibit or impose a penalty on the employment of male persons on such occasions of urgency as may in the judgment of the manager of the institution render such employment necessary, but the manager shall in each case report the employment to the visiting Commissioners or visitors at their next visit.

Males not to be employed in personal custody of females.

Book to be kept in Workhouse

Book to be
kept in
workhouse.

54.—(1.) The visiting guardians of every union shall, once at least in each quarter, enter in a book to be provided and kept by the master of the workhouse, such observations as they may think fit to make respecting the diet, accommodation, and treatment of the lunatics or alleged lunatics in the workhouse.

(2.) Such book shall be laid by the master before the Commissioner or Commissioners at his or their next visit.

Absence on Trial or for Health

Absence
on trial or
for health.

55.—(1.) Any two visitors of an asylum, with the advice in writing of the medical officer, may permit a patient in the asylum to be absent on trial so long as they think fit.

(2.) The visitors may make an allowance to a pauper lunatic absent from the asylum on trial, not exceeding the charge in the asylum, and that allowance, and no more, shall be paid for him as if he were in the asylum.

(3.) The manager of any hospital or licensed house may, with such consent as hereinafter mentioned,—

(a) send or take, under proper control, any private patient or two or more private patients to any specified place [or to travel in England (L. A., 1891, sec. 9, sub-sec. 1)] for such period as may be thought fit for the benefit of his or their health :

(b) permit a private patient to be absent upon trial for such period as may be thought fit.

(4.) The consent required by this section shall be either that of a Commissioner, or in the case of a hospital that of two members of the managing committee, or in the case of a house licensed by justices that of two of the visitors. Any such consent may be renewed, and the place when required to be specified varied.

(5.) Before such consent is given, the approval in writing of the person on whose petition the reception order was made, or by whom the last payment on account of the lunatic was made, shall be produced, unless the consenting persons, on cause being shown, dispense with the same.

(6.) A Commissioner as regards any hospital or licensed house, and two members of the managing committee of a hospital, and two of the visitors of a house [licensed by Justices (L. A., 1891, sec. 9, sub-sec. 2)], may, of their own authority, permit a pauper patient to be absent upon trial for such period as may be thought proper, and may make or order to be made an allowance to the pauper, not exceeding the charge for him in the hospital or house, which shall be payable as if he were in the hospital or house, but shall be paid over to him or for his benefit as [such Commissioner or such two visitors (L. A., 1891, sec. 9, sub-sec. 2)] may direct.

(7.) The medical officer of a hospital or licensed house may, of his own authority, permit any patient to be absent from the hospital or house for a period not exceeding forty-eight hours.

(8.) If a person allowed to be absent on trial for any period does not return at the expiration thereof, and a medical certificate certifying that his detention as a lunatic is no longer necessary is not sent to the visitors of the asylum or the manager of the hospital or house, he may at any time within

fourteen days after the expiration of the period of trial be retaken as in the case of an escape.

56.—(1.) Any person having charge of a single patient may change his residence and remove the patient to any new residence of such person in England. Change of residence of single patients.

(2.) Seven clear days before a change of residence, the person having charge of a single patient shall give notice in writing thereof, and of the place of the new residence, to the Commissioners and to the person on whose petition the reception order was made, or by whom the last payment on account of the patient was made.

(3.) Any person having charge of a single patient, with the previous consent of a Commissioner, may take or send the patient, under proper control, to any specified place or places, for any definite time, for the benefit of his health [or permit the patient to be absent upon trial for such period as may be thought fit (L. A., 1891, s. 10)].

(4.) Before any consent by a Commissioner is given, the approval in writing of the person on whose petition the reception order was made, or by whom the last payment on account of the patient was made, shall be produced to the Commissioner, unless, on cause being shown, he dispenses with the same.

Boarding-out Lunatics.

57.—(1.) Where application is made to the visiting committee of an asylum by any relative or friend of a pauper lunatic confined therein that he may be delivered over to the custody of such relative or friend, the committee may, upon being satisfied that the application has been approved by the guardians of the union to which the lunatic is chargeable or the local authority liable for his maintenance, and, in case the proposed residence is outside the limits of such union or the area subject to such local authority, then also by a justice having jurisdiction in the place where the relative or friend resides, and that the lunatic will be properly taken care of, order the lunatic to be delivered over accordingly. Maintenance for pauper lunatic taken charge of by relatives.

(2.) Where any such order is made, the authority liable for the maintenance of the lunatic shall pay to the person to whom the lunatic is delivered such allowance for the maintenance of the lunatic, not exceeding the expenses which would be incurred on his account if he were in the asylum, as such authority on the recommendation of the visiting committee of the asylum from which the lunatic was delivered over thinks proper.

(3.) For the purposes of section 24, sub-section 2 (f), of the Local Government Act, 1888, a lunatic boarded out by the authorities of any asylum shall be deemed to be a lunatic maintained in an asylum. 51 & 52 Vict., c. 41.

Removal of Lunatics.

58. A person having authority to order the discharge of a private patient from an institution for lunatics, or of any single patient, may, with the previous consent in writing of a Commissioner, by order in writing direct the removal of the patient to any institution for lunatics or to the charge of any person named in the order. Removal of private patient by person authorised to discharge the patient.

59.—(1.) Any two Commissioners may by order direct the removal of a lunatic from an institution for lunatics to any other institution for lunatics. Removal of lunatics by Commissioners.

(2.) Upon the death of a person having charge of a single patient, the Commissioners may, upon the application of the person having authority to discharge the patient, or if he does not apply within seven days after the death, upon their own motion, direct the patient to be removed to the charge of a person named in the order.

(3.) Any two Commissioners may at any time by order direct the removal of a lunatic from the charge of any person under whose care he is as a single patient, to the charge of any other person or to any institution for lunatics.

Removal of
lunatic from
workhouse
by Commis-
sioners.

60.—(1.) Where, upon the visitation of a workhouse by any two or more Commissioners, it appears to them that a lunatic or alleged lunatic therein is not a proper person to be allowed to remain in a workhouse, they may by order direct the lunatic to be removed to an institution for lunatics, and every such order shall have the same effect as a summary reception order.

(2.) The guardians of the union to which the workhouse belongs may appeal against an order under this section within one month from the making thereof to a Secretary of State, who shall thereupon employ a Commissioner, not being one of the Commissioners who made the order, or some other person, to make a special visitation of the workhouse and to report to him upon the matter, and the decision of the Secretary of State upon such report shall be conclusive.

Removal of
lunatic in a
hospital or
licensed
house by
guardians.

61.—(1.) The authority liable for the maintenance of a pauper lunatic detained in a hospital or licensed house may make an order for the removal of the lunatic [to the workhouse of the union to which the lunatic is chargeable, or if the lunatic is chargeable to a county or borough, to the workhouse of the union from which he was sent to the hospital or licensed house (L. A., 1891, s. 11)], and may direct the mode of removal.

(2.) Upon production to the manager of the hospital or house of a copy of the order he shall forthwith remove the patient or suffer him to be removed.

Removal
of lunatic
boarded
out into
asylum.

63. Where the visiting committee of an asylum has made an order for a pauper lunatic in the asylum to be delivered to the custody of a relative or friend, any two members of the committee may at any time, if they think fit, order the lunatic to be removed to the asylum.

Removal of
pauper into
county
asylum.

64. Any two visitors of an asylum may order a pauper lunatic chargeable to any union within any county or borough to which the asylum wholly or in part belongs, or to such county or to any county for the reception of the pauper lunatics whereof into that asylum there is a subsisting contract, to be removed to that asylum from any other institution for lunatics in which he may be detained.

Removal of
pauper from
asylum.

65.—(1.) Any two visitors of an asylum may order a pauper lunatic in the asylum to be removed to some other institution for lunatics.

(2.) A lunatic shall not be removed under this section without the consent in writing of two Commissioners, except to—

(a) an asylum within or belonging wholly or in part to the county within which the asylum from which the lunatic is removed is situate, or to the county in some parish of which the lunatic may have been adjudged to be settled; or

(b) a hospital or licensed house within any such county as aforesaid; or

(c) an institution for lunatics into which the lunatic can be received under a subsisting contract.

Directions as

66. The visitors making an order for the removal of a pauper lunatic may

by the order require any relieving officer, or other officer of the union, county, or borough to which the lunatic is chargeable, or may authorise any other person, to execute the same. to execution of order for removal.

67. A pauper lunatic shall not be removed under any order for removal made by two visitors without a medical certificate signed by the medical officer of the institution for lunatics from which the patient is to be removed, certifying that he is in a fit condition of bodily health to be removed. Restriction upon removal of paupers by two visitors.

68. Where a union is in more than one county, and the workhouse of the union is in one county, and the place from which a lunatic was sent to the workhouse is in another county, an order may be made by a justice for the county in which the workhouse is, or a justice for the county from which the lunatic was sent, for the removal of the lunatic either to the asylum of the county in which the workhouse is or to the asylum of the county from which the lunatic was sent, and such latter order may be made notwithstanding that there may be an asylum of the county in which the workhouse is, and there may not be a deficiency of room or any other special circumstances by reason whereof the lunatic cannot conveniently be taken to that asylum. Removal of lunatic from workhouse by a justice.

69. Except under the provisions of the preceding section a pauper lunatic shall not be removed under an order of removal to any institution for lunatics into which he could not have been received under a reception order. Restriction as to institution to which pauper may be removed.

70.—(1.) Every order for the removal of a lunatic from an institution for lunatics or from the charge of any person and the consent of the Commissioners thereto, where required, shall be in duplicate. One duplicate shall be delivered to the manager of the institution for lunatics or the person from whose care the lunatic is removed, and the other to the manager of the institution for lunatics, or the person into whose care the lunatic is removed. Removal orders to be in duplicate.

(2.) Every such order, with such consent as aforesaid where required, shall be sufficient authority for the removal and reception of the lunatic, in accordance with the order.

(3.) The manager of the institution from which, or the person from whose care the lunatic is removed under any such order, shall deliver, free of expense, a copy of the reception order and documents accompanying the same to the person executing the order for removal, to be by him delivered to the manager of the institution into which or the person into whose care the lunatic is removed.

(4.) Every such copy shall be certified under the hand of the person whose duty it is to deliver the same.

71.—(1.) Where an alien is detained as a lunatic, and his family or friends desire that he should be removed to the country of which he is a subject, the Commissioners, upon application by any member of the family or by a friend of the alien, may inquire into the circumstances of the case and report thereon to a Secretary of State. Removal of alien to his native country.

(2.) A Secretary of State, if satisfied by such report that the person to whom the report relates is an alien and a lunatic, and that his removal is likely to be for his benefit, and that proper arrangements have been made for such removal and for his subsequent care and treatment, may, by warrant, direct the alien to be delivered to the person named in the warrant for the purpose of removal to the country of which he is a subject, and every such

warrant shall be obeyed by the person or authority under whose charge the lunatic is.

(3.) A warrant under this section shall be sufficient authority for the master of any vessel to receive and detain the lunatic on board the vessel, and to convey him to his destination.

Discharge of Lunatics

Discharge of private patient.

72.—(1.) A private patient detained in an institution for lunatics, or under care as a single patient, shall be discharged if the person on whose petition the reception order was made by writing under his hand so directs.

(2.) If that person is dead, or incapable by reason of insanity, absence from England, or otherwise, of signing an order for discharge, or if a patient having been originally classified as a pauper is afterwards classified as a private patient, the person who made the last payment on account of the patient, or the husband or wife, or if there is no husband or wife, or the husband or wife is incapable as aforesaid, the father, or if there is no father, or he is incapable as aforesaid, the mother of the patient, or, if there is no mother, or she is incapable, then any one of the nearest of kin of the patient, may give the direction for his discharge.

(3.) If there is no person qualified to direct the discharge of a patient under this section, or no person able or willing to act, the Commissioners may order his discharge.

Discharge of pauper in hospital or house.

73. The authority liable for the maintenance of a pauper lunatic detained in a hospital or licensed house may make an order for the discharge of the lunatic, and may direct the mode of discharge, and upon production to the manager of the hospital or house of a copy of the order he shall forthwith discharge the patient, or suffer him to be discharged.

Restriction on discharge.

74. A patient shall not be discharged under the provisions of the two preceding sections if the medical officer of the institution, or, in the case of a single patient, his medical attendant, certifies in writing that the patient is dangerous and unfit to be at large, together with the grounds on which the certificate is founded, unless two of the visitors of the asylum, or the Commissioners visiting the hospital or house, or the visitors of the house, or in the case of a single patient, one of the Commissioners, after the certificate has been produced, consent in writing to the patient's discharge.

Discharge by Commissioners of patients in hospital or licensed house, and of single patients.

75. Two of the Commissioners, one of whom shall be a medical and the other a legal Commissioner, may visit a patient detained in any hospital or licensed house, or as a single patient, and may, within seven days after their visit, if the patient appears to them to be detained without sufficient cause, make an order for his discharge.

Notice of order of discharge.

76.—(1.) The Commissioners when they have made any order of discharge shall forthwith serve the same upon the manager of the institution for lunatics where the patient is detained, or upon the person having charge of the patient as a single patient, and shall give notice of such order,—

(a.) In the case of a private patient, to the person on whose petition the reception order was made or who made the last payment on account of the patient :

(b.) In the case of a pauper, to the authority liable for his maintenance.

(2.) Any person who has been duly served with any such order of discharge

and detains a patient after the date of discharge appointed thereby shall be guilty of a misdemeanor.

77.—(1.) Any three visitors of an asylum may order the discharge of any person detained therein whether he is recovered or not. Visitors may discharge patients in asylums.

(2.) Any two such visitors, with the advice in writing of the medical officer, may order the discharge of any person detained in the asylum.

78.—(1.) If after two visits by two visitors to a house licensed by justices, it appears to the visitors that any patient is detained without sufficient cause, the visitors may make such order as they think fit for his discharge. Discharge by visitors of lunatics in licensed houses.

(2.) In the case of visits under this section, one of the visitors shall be a medical practitioner.

(3.) The two visits shall be made by the same visitors at an interval of not less than seven days.

(4.) Seven days' notice of the second visit shall be given either by post or by an entry in the patients' book to the manager of the house, who shall forthwith send by post a copy of the notice, in the case of a private patient to the person on whose petition the reception order was made, or by whom the last payment on account of the lunatic was made, and in the case of a pauper to the authority liable for his maintenance, and also to the clerk of the visitors of the house.

(5.) The visitors before making an order under this section shall examine the medical officer of the house as to his opinion respecting the fitness of the patient to be discharged, if he tenders himself for examination.

(6.) If after such examination an order for discharge is made, and the medical officer furnishes to the visitors a statement of his reasons against the discharge, they shall forthwith send the statement to the clerk of the visitors.

(7.) This section shall not apply to a lunatic so found by inquisition.

(8.) Every order under this section shall be signed by the visitors by whom it is made.

79. When application is made to the visiting committee of an asylum by a relative or friend of a pauper lunatic confined therein, requiring that he may be delivered over to the custody and care of such relative or friend, any two of the visitors may, if they think fit, discharge the lunatic upon the undertaking of the relative or friend, to their satisfaction, that the lunatic shall be no longer chargeable to any union, county, or borough, and shall be properly taken care of and prevented from doing injury to himself or others. Discharge of pauper on application of relative or friend.

80.—(1.) When the visitors of an asylum order a pauper lunatic confined therein to be discharged, except on the application of a relative or friend, they may, when they think fit, send a notice in writing, signed by the clerk of the asylum, by post or otherwise, of their intention to discharge the lunatic to a relieving officer of the union to which the lunatic is chargeable, or to the clerk of the local authority liable for his maintenance. Visiting committee may send notice of intention to discharge pauper lunatic to relieving officer or clerk of local authority.

(2.) Upon receipt of such notice, the relieving officer or clerk shall cause the lunatic upon his discharge to be forthwith removed to the workhouse of the union to which the lunatic is chargeable, or, if the lunatic is chargeable to a county or borough, to the workhouse of the union from which he was sent to the asylum.

81. The guardians of the union to which a workhouse belongs may make an order for the discharge of any lunatic detained therein. Discharge from workhouse by guardians.

Copies of reception order and other documents to be furnished.

82. The Secretary to the Commissioners shall, upon the discharge of a person who considers himself to have been unjustly confined as a lunatic, furnish to him upon his request, free of expense, a copy of the reception order and certificate or certificates upon which he was confined, and if the order was made upon petition, also of the petition and statement of particulars upon which the reception order was made.

Recovery of Patient

Notice to be given on recovery of a patient.

83.—(1.) The manager of every hospital and licensed house, and a person having charge of a single patient, shall forthwith, upon the recovery of a patient, send notice thereof in the case of a patient not a pauper to the person on whose petition the reception order was made, or by whom the last payment on account of the patient was made, and in the case of a pauper to the guardians of his union, or if a local authority is liable for his maintenance to the clerk of the local authority.

(2.) The notice shall state that unless the patient is removed within seven days from the date of the notice he will be discharged.

(3.) In case the patient is not removed within seven days from the date of the notice he shall be forthwith discharged.

Inquiry into Cause of Death

Coroner to inquire into death if necessary.

84. Every coroner shall upon receiving notice of the death of a lunatic within his district, if he considers that any reasonable suspicion attends the cause and circumstances of the death, summon a jury to inquire into the same.

Escape and Recapture

Escape and recapture.

85. If any person detained as a lunatic under this Act escapes, he may, without a fresh order and certificate or certificates, be retaken at any time within fourteen days after his escape by the manager of the institution for lunatics or the master of the workhouse in which he was detained, or any officer, or servant thereof respectively, or by the person in whose charge he was as a single patient, or by anyone authorised in writing by such manager, master, or person.

Escape from England into Scotland or Ireland.

86.—(1.) If any person detained as a lunatic under lawful authority in England escapes into Scotland or Ireland, notice of the escape shall as soon as practicable be given to the Commissioners, who may, by writing under their seal, authorise an application to be made by such person as they think fit to any justice having jurisdiction in the place where the lunatic was so detained for a warrant authorising such person to retake the lunatic and bring him back to such place.

(2.) Such warrant, when granted, shall in Scotland or Ireland as well as in England be sufficient *prima facie* evidence that the person stated therein to have escaped was so detained as a lunatic under lawful authority as aforesaid, and of the fact of his escape, and shall be sufficient authority for any sheriff in Scotland, or for any justice in Ireland, to countersign the same; and any such warrant so countersigned may be executed in Scotland or Ireland, as the case may be, by retaking such lunatic and bringing him from thence, to the intent that he may be restored to the custody from which he escaped.

Escape from Scotland into England or Ireland.

87.—(1.) If any person detained as a lunatic under lawful authority in Scotland escapes into England or Ireland, notice of the escape shall as soon as

practicable be given to the General Board of Commissioners in Lunacy for Scotland, who may, by writing under the hand of one of such Commissioners, authorise an application to be made by such person as they think fit to any sheriff having jurisdiction in the place where the lunatic was so detained for a warrant authorising such person to retake the lunatic and bring him back to such place.

(2.) Such warrant, when granted, shall in England and Ireland as well as in Scotland be sufficient *prima facie* evidence that the person stated therein to have escaped was so detained as a lunatic under lawful authority as aforesaid, and of the fact of his escape, and shall be sufficient authority for any justice in England or Ireland to countersign the same; and any such warrant so countersigned may be executed in England or Ireland, as the case may be, by retaking such lunatic and bringing him from thence, to the intent that he may be restored to the custody from which he escaped.

(3.) For the purposes of this section a writing purporting to be signed by one of the Commissioners in Lunacy for Scotland shall be deemed to have been signed by him until the contrary is proved.

88.—(1.) If any person detained as a lunatic under lawful authority in Ireland escapes into England or Scotland, notice of the escape shall as soon as practicable be given, where such person has been so detained by order of the Lord Chancellor for the time being entrusted by the sign-manual of Her Majesty with the care and commitment of the custody of the persons and estates of the lunatics in Ireland, to the Registrar in Lunacy, and in other cases to the Inspectors of Lunatics in Ireland, who may, by writing under the hand of the said registrar or one of the said inspectors, as the case may be, authorise an application to be made by such person as they think fit to any justice having jurisdiction in the place where the lunatic was so detained for a warrant authorising such person to retake the lunatic and bring him back to such place.

Escape from
Ireland into
England or
Scotland.

(2.) Such warrant, when granted, shall in England and Scotland as well as in Ireland be sufficient *prima facie* evidence that the person stated therein to have escaped was so detained as a lunatic under lawful authority as aforesaid, and of the fact of such escape, and shall be sufficient authority for any justice in England, and for any sheriff in Scotland, to countersign the same; and any such warrant so countersigned may be executed in England or Scotland, as the case may be, by retaking the lunatic and bringing him from thence, to the intent that he may be restored to the custody from which he escaped.

(3.) For the purposes of this section a writing purporting to be signed by the Registrar in Lunacy, or one of the Inspectors of Lunatics in Ireland, as the case may be, shall be deemed to have been signed by him unless the contrary is proved.

89. A warrant, granted under any of the three preceding sections, shall not authorise the retaking of a lunatic after the expiration of the time during which he could have been retaken according to the law in force in the place where he was detained as a lunatic if he had remained there after his escape.

Limit of time
of retaking
lunatic.

PART III

JUDICIAL INQUISITION AS TO LUNACY

The Inquisition

Order for
inquisition as
to lunacy.

90.—(1.) The Judge in Lunacy may upon application by order direct an inquisition whether a person is of unsound mind and incapable of managing himself and his affairs.

(2.) Where the alleged lunatic is within the jurisdiction, he shall have notice of the application and shall be entitled to demand an inquiry before a jury.

(3.) Upon the hearing of the application, the alleged lunatic may withdraw any demand for a jury made by him.

Demand of
a jury by
alleged
lunatic.

91. Where the alleged lunatic demands a jury, the Judge in Lunacy shall in his order for inquisition direct the return of a jury, unless he is satisfied, by personal examination of the alleged lunatic, that he is not mentally competent to form and express a wish for an inquisition before a jury; and the Judge may, where he deems it necessary, and for the purpose of personal examination, require the alleged lunatic to attend him at such convenient time and place as he may appoint.

Cases where
a jury may
be dispensed
with.

92. Where the alleged lunatic does not demand a jury, or the Judge in Lunacy is satisfied by a personal examination that he is not mentally competent to form and express a wish in that behalf, and it appears to the Judge, upon consideration of the evidence, and of the circumstances of the case, to be unnecessary or inexpedient that the inquisition should be before a jury, and he accordingly does not in his order for inquisition direct the return of a jury, then the Masters shall, without a jury, personally examine the alleged lunatic, and take such evidence, upon oath or otherwise, and call for such information as they think fit or the Judge directs, in order to ascertain whether or not the alleged lunatic is of unsound mind, and shall certify their finding thereon.

Jury to be
had, if mas-
ters certify
that it is
expedient.

93. Where the Judge in Lunacy does not in his order for inquisition direct the return of a jury, but the Masters, upon consideration of the evidence, certify that in their opinion an inquisition before a jury is expedient, they shall, without further order, issue their precept to the sheriff, and shall proceed in like manner in all respects, and their proceedings shall be as valid and effectual as if the Judge had directed the return of a jury in the first instance.

Inquiries be-
fore a jury
may be made
by means of
an issue in
the High
Court.

94.—(1.) Wherever the judge in Lunacy orders an inquisition before a jury, he may by his order direct an issue to be tried in the High Court, and the question in such issue shall be whether the alleged lunatic is of unsound mind and incapable of managing himself or his affairs; and the provisions of this Act with respect to commissions of lunacy and orders for inquisition to be tried by a jury, and the trial thereof, and the constitution of the jury shall apply to any issue to be directed as aforesaid, and the trial thereof, and subject thereto and to the provisions of this Act such issue and the trial thereof shall be regulated by the Rules of the Supreme Court for the time being in force relating to the trial of issues of fact by a jury, and the verdict upon any such issue finding the alleged lunatic to be of unsound mind and incapable of manag-

ing himself or his affairs shall have the same effect as an inquisition under this Act.

(2.) On the trial of every such issue the alleged lunatic shall, if he is within the jurisdiction, be examined before the evidence is taken, and at the close of the proceedings, before the jury consult as to their verdict, unless the Judge who tries the issue otherwise directs; and such examinations shall take place either in open court or in private as such Judge directs.

[“L. A., 1891, s. 26.—(1.) The provisions of section ninety-four, sub-section two of the principal Act as to the trial of issues in the High Court shall extend to all inquisitions, and the Masters may, for the purpose of inquisitions held before them, exercise the powers by that sub-section conferred upon the Judge who tries the issue.

“(2.) The Masters may make orders for the attendance of an alleged lunatic at such time and place as the order directs, for examination by the Masters or a medical practitioner, and such order may be enforced in the same way as an order of a Judge of the High Court.”]

95. Where the Masters certify that the alleged lunatic is of unsound mind, and incapable of managing himself or his affairs, or that he is of sound mind, and capable of managing his affairs, the certificate shall have the same effect as an inquisition taken upon the oath of a jury.

96. Where the alleged lunatic is not within the jurisdiction it shall not be necessary to give him notice of the application for inquisition, and the inquisition shall be before a jury.

97. The Lord Chancellor may, by order, regulate the number of jurors to be sworn, but so that every inquisition upon the oath of a jury be found by the oaths of twelve men at least.

98.—(1.) The inquisition shall be confined to the question whether or not the alleged lunatic is at the time of the inquisition of unsound mind, and incapable of managing himself or his affairs, and no evidence as to anything done or said by him, or as to his demeanour or state of mind at any time, being more than two years before the time of the inquisition, shall be receivable in proof of insanity, or on the trial of any traverse of an inquisition, unless the person executing the inquisition otherwise directs.

(2.) If upon such inquisition it appears that the alleged lunatic is of unsound mind, so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, it may be so specially found and certified.

99. The person executing an inquisition shall, while so employed, have all the powers, authorities, and discretion of a Judge of the High Court.

100. Where the Commissioners report to the Lord Chancellor that they are of opinion that the property of any person detained or taken charge of as a lunatic, but not so found by inquisition, is not duly protected, or that the income thereof is not duly applied for his benefit, or to the same effect, the report shall be filed with the Masters, and shall be deemed to be an application for inquisition supported by evidence, and the alleged lunatic shall have notice of the report from such person as the Judge in Lunacy directs, and the case shall proceed and be conducted as nearly as may be in all respects as is hereinbefore directed upon an application for inquisition.

Certificate of masters without a jury to have the force and effect of an inquisition

Jury to be had if lunatic out of jurisdiction.

Number of jury.

Nature and limit of inquisitions.

Power of person executing inquiry.

Inquisition may be ordered on report of Commissioners.

Traverse and Supersedeas of an Inquisition

Applications for traverse to be made within a limited time.

101.—(1.) Any person desiring to traverse an inquisition, not being a verdict upon an issue tried in the High Court, may, within three months next after the day of the return of the inquisition, apply for that purpose to the Judge in Lunacy.

(2.) The Judge shall hear and determine the application, and shall in his order upon it for a traverse limit a time, not exceeding six months from the date of the order, within which the person desiring to traverse and all other proper parties are to proceed to trial of the traverse.

(3.) The Judge may by the same or any other order direct that the person desiring to traverse, not being the person the object of the inquisition, shall within three weeks next after the date of the order give sufficient security to and to the satisfaction of the Masters for all proper parties proceeding to trial within the time to be limited as aforesaid.

Persons not proceeding to trial within limited time barred.

102. Every person who does not within the appointed time apply for a traverse, or who refuses or neglects to give such security as aforesaid, or who does not proceed to trial within the appointed time, shall be absolutely barred of the right of traverse: Provided that the Judge in Lunacy may, under the special circumstances of any particular case, extend the time upon such terms as he thinks just.

Judge may direct new trials.

103. If the Judge in Lunacy is dissatisfied with the verdict returned upon a traverse, he may order one or more new trial or trials thereon, as he thinks fit; but no person shall be admitted to traverse oftener than once.

New trial of an issue.

104. A traverse of a verdict upon an issue tried in the High Court shall not be allowed, but the Judge in Lunacy may, if he thinks fit, upon application within three months next after the trial of any such issue, order a new trial of the issue, or a new inquisition as to the insanity of the alleged lunatic, subject to such directions and upon such conditions as to the Judge may seem proper.

Commission may be superseded on conditions.

105. If it appears to the Judge in Lunacy that it is not expedient or for the benefit of the lunatic that the commission should be unconditionally superseded, but that the same should be superseded on terms and conditions, he may, upon the consent of the lunatic and any other persons whose consent he deems necessary, order the commission to be superseded upon such terms and conditions as he thinks proper, and the Judge may make such orders as he thinks fit for giving effect to such terms and conditions.

Power to supersede inquisition as regards commitment of person.

106.—(1.) The Judge in Lunacy, if satisfied by a report of the Commissioners, or of one of the Chancery Visitors, or on any other evidence, that a lunatic so found by inquisition is cured or capable of managing himself, and not dangerous to himself or others, though incapable of managing his affairs, may, if he thinks it desirable that the ordinary proceedings for a supersedeas should not be insisted on, by order supersede the inquisition, so far as the same finds that the lunatic is incapable of managing himself, and rescind or vary any order for the commitment of the person of the lunatic.

(2.) An order under this section may be made on such terms and conditions as the Judge thinks fit.

(3.) Notice of an order under this section shall be forthwith given to the committee of the person of the lunatic, and also to the person under whose care the lunatic is.

Transmission of Inquisition and Supersedeas to Ireland and England

107. Where it is desired that an inquisition taken, or a writ of supersedeas issued in England or Ireland, should be acted upon in Ireland or England, the proper officer may, under order of the Judge in Lunacy in England, or the Lord Chancellor for the time being entrusted by the sign-manual of Her Majesty with the care and commitment of the custody of the persons and estates of lunatics in Ireland, as the case may be, transmit a transcript of the record of the inquisition, or of the writ, to the Registrar in Lunacy in Ireland or the High Court in England, as the case may be, which transcript shall thereupon be entered and be of record there respectively, and shall, when so entered of record, and if and so long only as the Lord Chancellor entrusted as aforesaid in Ireland and the Judge in Lunacy in England, as the case may be, thinks fit, be acted upon by them respectively, and be of the same validity and effect, to all intents and purposes, as if the inquisition had been taken or the writ issued in Ireland or England respectively.

Transmission of inquisition and supersedeas to Ireland and England.

PART IV

JUDICIAL POWERS OVER PERSON AND ESTATE OF LUNATICS

The Judge in Lunacy

108.—(1.) The jurisdiction of the Judge in Lunacy under this Act shall be exercised either by the Lord Chancellor for the time being entrusted by the sign-manual of Her Majesty with the care and commitment of the custody of the persons and estates of lunatics, acting alone or jointly with any one or more of such Judges of the Supreme Court as may for the time being be entrusted as aforesaid, or by any one or more of such Judges as aforesaid.

Jurisdiction of judge in lunacy.

(2.) The Judge in Lunacy may make orders for the custody of lunatics so found by inquisition and the management of their estates, and every such order shall take effect as to the custody of the person immediately, and as to the custody of the estate upon the Master's certificate of completion of the committee's security.

(3.) Where upon the inquisition it is specially found or certified that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Judge in Lunacy may make such orders as he thinks fit for the commitment of the estate of the lunatic and its management, including all proper provisions for the maintenance of the lunatic, but it shall not be necessary, unless in the discretion of the Judge it appears proper to do so, to make any order as to the custody or commitment of the person of the lunatic.

(4.) Any order under this section may be made notwithstanding proceedings are pending for a traverse or new trial, and any person acting upon an order so made shall be indemnified as effectually as if there had been no right of traverse or new trial.

109. The costs of all proceedings for the purpose of ascertaining whether a Costs.

person is lunatic, and of all proceedings in the matter of a lunatic shall be in the discretion of the Judge in Lunacy, who may order all or any of such costs to be paid by the lunatic or alleged lunatic, or to be charged upon and paid out of his estate, or such part thereof as the Judge thinks fit, or by any other party to the proceedings; and in the case of the death of the lunatic or alleged lunatic, an order for payment of costs out of his estate may be made within six years next after the right to recover the costs has accrued, and every such order shall have the effect of an order of the High Court.

Powers to
extend to
British
possessions

110. The powers and authorities given by this Act to the Judge in Lunacy shall extend to property within any British possession.

[“L. A., 1891, s. 27.—(1.) Subject to rules in lunacy the jurisdiction of the Judge in Lunacy as regards administration and management may be exercised by the Masters, and every order of a Master in that behalf shall take effect unless annulled or varied by the Judge in Lunacy.”]

The Masters

Masters in
Lunacy.

111.—(1.) There shall continue to be Masters in Lunacy as heretofore, and they shall, subject to the provisions of this Act and the Rules in Lunacy, execute and perform the same powers and duties as heretofore, and shall perform such other duties for the benefit of lunatics and their estates as the Lord Chancellor may direct.

(2.) The powers and authorities of the Masters shall be joint and several, and they shall execute commissions and conduct inquiries connected with lunatics or their estates, and perform all other duties committed to them, either separately or together, and at such places, within such times, and in such manner as the Rules in Lunacy, and, subject thereto, as the Judge in Lunacy may by any special order direct.

(3.) A Master must be a barrister of not less than ten years' standing, and shall be appointed by the Lord Chancellor.

(4.) A Master shall, before being capable of acting, make before the Lord Chancellor, in the manner now used, the declaration to be made by a Master set forth in the First Schedule.

(5.) The Masters shall have such clerks and officers as the Lord Chancellor may, with the concurrence of the Treasury as to number and salaries, determine.

(6.) The salaries of the Masters, their clerks and officers, and their expenses to the amount sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

Commission
of inquiry.

112. A general commission of inquiry, with such variations as may be expedient, may from time to time be issued in duplicate under the Great Seal, directed to the Masters by name, jointly and severally, who shall by virtue thereof proceed, in each case of alleged lunacy concerning which the Judge in Lunacy orders them to inquire, in like manner and with all the like powers and authorities (subject to the provisions in this Act contained) as heretofore.

Special
commission
may issue.

113. The Lord Chancellor may issue a commission specially to any person or persons alone or in addition to the Masters, or one of them, if upon any occasion he thinks it proper to do so; and the provisions of this Act so far as applicable shall extend to every commission so issued specially.

Power to

114. The Masters may administer any oath and take any affidavit and may

summon any person to give evidence before them, and every person so summoned shall be bound to attend as required by the summons. summon witnesses.

Expiration of Orders for the Commitment of Person

115.—(1.) The medical attendant of every lunatic so found by inquisition shall, before the expiration of one, three, and six years respectively from the commencement of this Act, and before the expiration of every subsequent period of five years after the expiration of six years from the commencement of this Act, send to the Masters a report as to the mental and bodily condition of the patient, with a certificate under his hand certifying, if it is the fact, that the patient is still of unsound mind and a proper person to be detained under care and treatment. Order for custody of person of lunatic so found to determine unless continued.

(2.) If, before the expiration of any of the periods hereinbefore mentioned, such report and certificate are not sent to the Masters, they shall inquire as to the omission, and unless they are satisfied that the lunatic is still of unsound mind, the order for the commitment of the person of the lunatic as to whom such report and certificate are not sent shall determine at the expiration of such period; but nothing herein contained shall affect the commitment of the estate.

(3.) A Master may, by order under his hand, extend the time within which any report and certificate under this section is to be sent to the Masters, and if the time is so extended, the order for commitment of the person of the lunatic as to whom the time is so extended shall continue in force until the expiration of the extended time, but such extended time shall not exceed six months.

(4.) Where any order for commitment of the person of a lunatic has determined under this section, the Masters shall forthwith give notice of such determination to the committee of the person of the lunatic and to the person under whose care the lunatic is.

Management and Administration

116.—(1.) The powers and provisions of this Part of this Act relating to management and administration apply— Extent of the administrative powers of the Judge in Lunacy.

- (a.) To lunatics so found by inquisition;
- (b.) To lunatics not so found by inquisition for the protection or administration of whose property any order has been made before the commencement of this Act;
- (c.) To every person lawfully detained as a lunatic though not so found by inquisition;
- (d.) To every person not so detained and not found a lunatic by inquisition, with regard to whom it is proved to the satisfaction of the Judge in Lunacy that such person is through mental infirmity arising from disease or age incapable of managing his affairs;
- (e.) To every person with regard to whom it is proved to the satisfaction of the Judge in Lunacy by the certificate of a Master, or by the report of the Commissioners, or by affidavit or otherwise, that such person is of unsound mind and incapable of managing his affairs, and that his property does not exceed two thousand pounds in value, or that the income thereof does not exceed one hundred pounds per annum;

(*f.*) To every person with regard to whom the Judge is satisfied by affidavit or otherwise that such person is or has been a criminal lunatic and continues to be insane and in confinement.

(2.) In the case of any of the above-mentioned persons not being lunatics so found by inquisition, such of the powers of this Act as are made exercisable by the committee of the estate under order of the Judge shall be exercised by such person in such manner and with or without security as the Judge may direct; and any such order may confer upon the person therein named authority to do any specified act, or exercise any specified power, or may confer a general authority to exercise on behalf of the lunatic, until further order, all or any of such powers without further application to the Judge.

[“ L. A., 1891, s. 27 (4).—The provisions of section one hundred and sixteen, sub-section two, of the principal Act shall apply to the persons named in sub-section one (*d.*) of the same section though not lunatics.”]

(3.) Every person appointed to do any such Act or exercise any such power shall be subject to the jurisdiction and authority of the Judge as if such person were the committee of the estate of a lunatic so found by inquisition.

(4.) The powers of this Act relating to management and administration shall be exercisable in the discretion of the Judge for the maintenance or benefit of the lunatic or of him and his family, or where it appears to be expedient in the due course of management of the property of the lunatic.

(5.) Nothing in this Act shall subject a lunatic's property to claims of his creditors further than the same is now subject thereto by due course of law.

Power to
raise money
for certain
purposes.

117.—(1.) The Judge may order that any property of the lunatic, whether present or future, be sold, charged, mortgaged, dealt with, or disposed of as the Judge thinks most expedient for the purpose of raising or securing, or repaying with or without interest, money which is to be or which has been applied to all or any of the purposes following:

(*a.*) Payment of the lunatic's debts or engagements;

(*b.*) Discharge of any incumbrance on his property;

(*c.*) Payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit;

(*d.*) Payment of or provision for the expenses of his future maintenance.

(2.) In case of a charge or mortgage being made under this Act for the expenses of future maintenance, the Judge may direct the same to be payable, either contingently if the interest charged is a contingent or future one, or upon the happening of the event if the interest is depending on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as he thinks expedient.

Charge for
permanent
improvements.

118.—(1.) The Judge may order that the whole or any part of any moneys expended or to be expended under his order for the permanent improvement, security, or advantage of the property of the lunatic, or of any part thereof, shall, with interest, be a charge upon the improved property or any other property of the lunatic, but so that no right of sale or foreclosure during the lifetime of the lunatic be conferred by the charge.

(2.) The interest shall be kept down during the lunatic's lifetime, out of the income of his general estate, as far as the same is sufficient to bear it.

(3.) The charge may be made either to some person advancing the money, or if the money is paid out of the lunatic's general estate, to some person as a trustee for him, as part of his personal estate.

119. Where a person being a member of a partnership becomes lunatic the Judge may, by order, dissolve the partnership.

Power to dissolve partnership.

120. The Judge may, by order, authorise and direct the committee of the estate of a lunatic to do all or any of the following things :

Powers exercisable by committee under order of Judge.

- (a.) Sell any property belonging to the lunatic ;
- (b.) Make exchange or partition of any property belonging to the lunatic or in which he is interested, and give or receive any money for equality of exchange or partition ;
- (c.) Carry on any trade or business of the lunatic.
- (d.) Grant leases of any property of the lunatic for building, agricultural, or other purposes ;
- (e.) Grant leases of minerals forming part of the lunatic's property, whether the same have been already worked or not, and either with or without the surface or other land ;
- (f.) Surrender any lease and accept a new lease.
- (g.) Accept a surrender of any lease and grant a new lease.
- (h.) Execute any power of leasing vested in a lunatic having a limited estate only in the property over which the power extends ;
- (i.) Perform any contract relating to the property of the lunatic entered into by the lunatic before his lunacy ;
- (j.) Surrender, assign, or otherwise dispose of with or without consideration any onerous property belonging to the lunatic ;
- (k.) Enter into any agreement touching the patronage of augmented cures under the Act one George the First, chapter ten, which the lunatic might have entered into if he had been of sound mind ;
- (l.) Exercise any power or give any consent required for the exercise of any power where the power is vested in the lunatic for his own benefit or the power of consent is in the nature of a beneficial interest in the lunatic.

121. Any property taken in exchange and any renewed lease accepted on behalf of a lunatic under the powers of this Act shall be to the same uses and be subject to the same trusts, charges, incumbrances, dispositions, devises, and conditions as the property given in exchange or the surrendered lease was or would but for the exchange or surrender have been subject to.

Property exchanged and renewed lease to be to same uses as before.

122.—(1.) The power to authorise leases of a lunatic's property under this Act shall extend to property of which the lunatic is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the lunatic and all persons entitled in remainder and reversion expectant upon the estate tail of the lunatic including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the lunatic shall have the same rights and remedies against the lessee, his executors, administrators, and assigns, as the lunatic or his committee would have had.

Extent of leasing power.

(2.) Leases authorised to be granted and accepted by or on behalf of a lunatic under this Act may be for such number of lives or such term of years, at such rent and royalties, and subject to such reservations, covenants, and conditions as the Judge approves.

(3.) Fines or other payments on the renewal of leases may be paid out of the lunatic's estate, with interest on the leasehold property.

Lunatic's
interest in
property
not to be
altered.

123.—(1.) The lunatic, his heirs, executors, administrators, next of kin, devisees, legatees, and assigns, shall have the same interest in any moneys arising from any sale, mortgage, or other disposition, under the powers of this Act which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage, or disposition, if no sale, mortgage, or disposition, had been made, and the surplus moneys shall be of the same nature as the property sold, mortgaged, or disposed of.

(2.) Moneys received for equality of partition and exchange, or under any lease of unopened mines, and all fines, premiums, and sums of money received upon the grant or renewal of a lease, where the property the subject of the partition, exchange, or lease was real estate of the lunatic, shall, subject to the application thereof for any purposes authorised by this Act, as between the representatives of the real and personal estate of the lunatic, be considered as real estate, except in the case of fines, premiums, and sums of money received upon the grant or renewal of leases of property of which the lunatic was tenant for life, in which case the fines, premiums, and sums of money shall be personal estate of the lunatic.

(3.) In order to give effect to this section the Judge may direct any money to be carried to a separate account, and may order such assurances and things to be executed and done as he thinks expedient.

Power to
carry orders
into effect.

124. The committee of the estate, or such person as the Judge approves, shall in the name and on behalf of the lunatic execute and do all such assurances and things for giving effect to any order under this Act as the Judge directs, and every such assurance and thing shall be valid and effectual, and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject.

Admittance
to copyholds.

125. Where a lunatic so found by inquisition is entitled to be admitted tenant of copyhold land, the committee of his estate may appear at one of the three next courts holden for the manor (for the holding whereof the usual notice shall be given), and there offer himself to be admitted tenant in the name and on behalf of the lunatic; and in default of his appearance, or of his acceptance of admittance, the lord or his steward may, after three courts duly holden, and proclamations thereat regularly made, at any subsequent court appoint any fit person to be attorney for the lunatic for that purpose only, and by that attorney admit the lunatic tenant of the land, according to such estate as the lunatic is legally entitled to therein.

Fines upon
admittance.

126.—(1.) The lord or his steward may upon the admittance impose such fine as might have been imposed if the lunatic had been of sound mind, which fine may be demanded by the lord's bailiff or agent, by a note in writing signed by the lord or his steward, to be left with the committee of the estate, or with the tenant or occupier of the land.

(2.) If the fine is not paid or tendered to the lord or his steward within three months after demand, then the lord may enter upon and hold the land and receive the rents and profits thereof, (but without liberty to fell any timber standing thereon,) until he is thereby fully paid the fine, with his reasonable costs and charges of raising the same, and of obtaining the posses-

sion of the land, although the lunatic die before the fine and costs and charges have been raised.

(3.) The lord shall yearly, on demand by the person entitled to the surplus rents and profits, after payment of the fine and costs and charges, or by the person then entitled to the land, render an account of the rents and profits received by him or on his behalf, and shall pay the surplus, if any, to the person entitled thereto.

(4.) As soon as the fine and costs and charges have been fully paid, or if after the lord's entry, the fine and costs and charges are lawfully tendered to him, then the lunatic, by the committee of his estate or other the person entitled, may enter upon and hold the land, according to his estate or interest therein; and the lord shall deliver possession thereof accordingly; and if he refuse so to do he shall make satisfaction to the person kept out of possession for all the damages which he thereby sustains, and all his costs and charges of recovering possession.

(5.) If the committee pays the fine and costs and charges, then he, his executors and administrators, may enter upon and hold the land, and receive the rents and profits thereof until payment thereof of the amount disbursed upon that account, although the lunatic die before reimbursement.

(6.) If the fine imposed is not warranted by the custom of the manor, or is unlawful, the lunatic may controvert its legality, as if this Act had not been passed; and no lunatic so found by inquisition shall forfeit any land for his neglect or refusal to appear at any court, or to be admitted thereto, or to pay the fine imposed upon his admittance.

127.—(1.) Where it appears to the Judge that there is reason to believe that the unsoundness of mind of any lunatic so found by inquisition is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of the lunatic, or of the lunatic and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income or of ready money belonging to the lunatic, and standing to his account with a banker or agent, or being in the hands of any person for his use, is readily available and may be safely and properly applied in that behalf, the Judge may allow thereout such amount as he thinks proper for the temporary maintenance of the lunatic, or of the lunatic and the members of his immediate family who are dependent upon him for maintenance, and may, instead of proceeding to order a grant of the custody of the estate, order or give liberty for the payment of any such sum of money as aforesaid, or any part thereof, to such person as, under the circumstances of the case, he thinks proper to intrust with the application thereof, and may direct the same to be paid to such person accordingly, and when received to be applied, and the same shall accordingly be applied, in or towards such temporary maintenance as aforesaid.

Where lunacy temporary money may be applied for temporary maintenance.

(2.) The receipt in writing of the person to whom payment is to be made for any moneys payable to him by virtue of an order under this section shall be a good discharge, and every person is hereby directed to act upon and obey every such order.

(3.) The person receiving any money by virtue of an order under this section shall pass an account thereof before the Masters when required.

128. Where a power is vested in a lunatic in the character of trustee or Committee

may exercise power vested in lunatic in character of trustee or guardian.

guardian, or the consent of a lunatic to the exercise of a power is necessary in the like character, or as a check upon the undue exercise of the power, and it appears to the Judge to be expedient that the power should be exercised or the consent given, the committee of the estate, in the name and on behalf of the lunatic, under an order of the Judge, made upon the application of any person interested, may exercise the power or give the consent in such manner as the order directs.

Appointment of new trustees under power to have effect of appointments by High Court, and like orders may be made as under Trustee Act, 1850.

129. Where under this Act the committee of the estate, under order of the Judge, exercises, in the name and on behalf of the lunatic, a power of appointing new trustees vested in the lunatic, the person or persons who shall, after and in consequence of the exercise of the power, be the trustee or trustees, shall have all the same rights and powers as he or they would have had if the order had been made by the High Court; and the Judge may in any such case, where it seems to him to be for the lunatic's benefit and also expedient, make any order respecting the property subject to the trust which might have been made in the same case under the Trustee Act, 1850, or any Act amending the same, on the appointment thereunder of a new trustee or new trustees.

Temporary provision for maintenance of lunatic.

130. In any case where, pending the appointment of committees, it appears to the Masters desirable that temporary provision should be made for the expenses of the maintenance or other necessary purposes or requirements of the lunatic, or any member of his family, out of any cash or available securities belonging to him in the hands of his bankers, or of any other person, the Masters shall be at liberty by certificate to authorise such banker or other person to pay to the person to be named in such certificate such sum as they certify to be proper; and may by such certificate give any directions as to the proper application thereof for the lunatic's benefit by that person, who shall be accountable for the same as the Masters direct.

Powers as to property in England, Scotland, and Ireland

Power to deal with property in England, Scotland, and Ireland.

131.—(1.) The powers of management and administration of the estates of lunatics conferred by this Act shall, without an inquisition or other proceedings in Ireland, extend to the personal property in Ireland of a lunatic so found by inquisition in England where such personal property does not exceed two thousand pounds in value or the income thereof does not exceed one hundred pounds a year; and the like powers conferred by the Lunacy Regulations (Ireland) Act, 1871, shall, without an inquisition or other proceedings in England, extend to the personal property in England of a lunatic so found by inquisition in Ireland where such personal property or the income thereof does not exceed such amount as aforesaid.

(2.) Where a person has been found lunatic by inquisition in England or Ireland, and has personal property in Scotland, the committee of the estate of the lunatic shall, without cognition or other proceedings in Scotland, have all the same powers as to such property, or the income thereof, as might be exercised by a tutor at law after cognition or a duly appointed curator bonis to a person of unsound mind in Scotland.

(3.) Where a tutor at law after cognition or a curator bonis has been appointed to a lunatic in Scotland, who has personal property in England or Ireland, the tutor at law or curator bonis shall, without an inquisition or other proceedings in England or Ireland, have all the same powers as to such

property, or the income thereof, as might be exercised by the committee of the estate of a lunatic, so found by inquisition in England or Ireland.

(4.) The powers of management and administration conferred by this Act in cases where the property of a person of unsound mind does not exceed two thousand pounds in value, or the income thereof does not exceed one hundred pounds per annum, and the powers conferred by section sixty-eight of the Lunacy Regulation (Ireland) Act, 1871, shall extend to the property in Ireland or England, as the case may be, of the lunatic where the total value of the property in England and Ireland does not exceed two thousand pounds in value, or the income thereof does not exceed one hundred pounds a year. 34 & 35 Vict.,
c. 22, s. 68.

Power of County Court Judge

132.—(1.) Where a reception order is made in the case of a lunatic the value of whose real and personal property is under two hundred pounds, and no relative or friend of the lunatic is willing to undertake the management of such property, any judge of county courts having jurisdiction in the place from which the lunatic is sent, may, upon the application of the clerk of the guardians, or a relieving officer of the union from which the lunatic is sent, authorise the clerk or relieving officer, or such other person as the Judge by his order appoints, to take possession of and sell and realise the real and personal property of the lunatic, and to exercise all the powers which could be exercised by the legal personal representative of the lunatic if he were dead; and the receipt of the person so authorised shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person. Power to
deal with
property
of small
amount.

(2.) The Judge, by whom such order is made, may by the same or any subsequent orders give such directions as he thinks fit as to the application of the property of the lunatic for his benefit or in reimbursement of such sums as may have been or may be expended by the guardians of the union for his care or relief, or of the costs or expenses incurred in relation to the lunatic by such guardians, or by the person acting under any such order as aforesaid; or the Judge may, if he thinks fit, order that the whole or any part of the proceeds of the lunatic's property be paid into the county court to the credit of an account intitled in the matter of such lunatic, and any sum so paid into court may either be invested in the manner provided by the county court rules in force for the time being, or be paid out of court from time to time to such person as the judge directs, to be held and applied for the benefit of such lunatic, or in or towards such reimbursement as aforesaid, in such manner as the Judge directs.

(3.) The person acting under any such order shall render an account of his dealings with the lunatic's property to the Judge by whom such order was made in such manner as the Judge appoints.

Vesting Orders

133. Where any stock is standing in the name of or is vested in a lunatic beneficially entitled thereto, or is standing in the name of or vested in a committee of the estate of a lunatic so found by inquisition, in trust for the lunatic, or as part of his property, and the committee dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the High Court, or it Power to
transfer
stock of
lunatic.

is uncertain whether the Committee is living or dead, or he neglects or refuses to transfer the stock, and to receive and pay over the dividends thereof as the Judge in Lunacy directs, then the Judge may order some fit person to transfer the stock to or into the name of a new committee or into court or otherwise, and also to receive and pay over the dividends thereof in such manner as the Judge directs.

Stock in
name of
lunatic out
of the
jurisdiction.

134. Where any stock is standing in the name of or vested in a person residing out of the jurisdiction of the High Court, the Judge in Lunacy, upon proof to his satisfaction that the person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may order some fit person to make such transfer of the stock or any part thereof to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends thereof, as the Judge thinks fit.

Power to
vest lands
and release
contingent
right of
lunatic
trustee or
mortgagee.

135.—(1.) When a lunatic is solely or jointly seised or possessed of any land upon trust or by way of mortgage the Judge in Lunacy may by order vest such land in such person or persons for such estate, and in such manner, as he directs.

(2.) When a lunatic is solely or jointly entitled to a contingent right in any land upon trust or by way of mortgage, the Judge may by order release such hereditaments from the contingent right, and dispose of the same to such person or persons as the Judge directs.

(3.) An order under sub-sections (1) and (2) shall have the same effect as if the trustee or mortgagee had been sane, and had executed a deed conveying the lands for the estate named in the order, or releasing or disposing of the contingent right.

(4.) In all cases where an order can be made under this section the Judge may, if it is more convenient, appoint a person to convey the land or release the contingent right, and a conveyance or release by such person in conformity with the order shall have the same effect as an order under sub-sections (1) and (2).

(5.) Where an order under this section vesting any copyhold land in any person or persons is made with the consent of the lord or lady of the manor, such land shall vest accordingly without surrender or admittance.

(6.) Where an order is made appointing any person or persons to convey any copyhold land, such person or persons shall execute and do all assurances and things for completing the assurance of the lands; and the lord and lady of the manor shall, subject to the customs of the manor and the usual payments, be bound to make admittance to the land, and to do all other acts for completing the assurance thereof, as if the persons in whose place an appointment is made were free from disability and had executed and done such assurances and things.

Power to
vest right
to transfer
stock and sue
for chose in
action.

136.—(1.) Where a lunatic is solely entitled to any stock or chose in action upon trust or by way of mortgage, the Judge in Lunacy may by order vest in any person or persons the right to transfer or call for a transfer of the stock, or to receive the dividends thereof, or to sue for the chose in action.

(2.) In the case of any person or persons jointly entitled with a lunatic to any stock or chose in action upon trust or by way of mortgage, the Judge may make an order vesting the right to transfer or call for a transfer of the stock, or to receive the dividends thereof, or to sue for the chose in action

either in such person or persons alone or jointly with any other person or persons.

(3.) When any stock is standing in the name of a deceased person, whose personal representative is a lunatic, or when a chose in action is vested in a lunatic as the personal representative of a deceased person, the Judge may make an order vesting the right to transfer or call for a transfer of the stock, or to receive the dividends thereof, or to sue for the chose in action in any person or persons he may appoint.

(4.) In all cases where an order can be made under this section, the Judge may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(5.) The person or persons in whom the right to transfer or call for a transfer of any stock is vested, may execute and do all powers of attorney, assurances, and things to complete the transfer to himself or themselves or any other person or persons according to the order, and the Bank and all other companies and their officers and all other persons shall be bound to obey every order under this section according to its tenor.

(6.) After notice in writing of an order under this section, it shall not be lawful for the Bank or any other company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

137. Where a person is appointed to make or join in making a transfer of stock, such person shall be some proper officer of the Bank, or the company or society whose stock is to be transferred. Person to be appointed to transfer.

138. The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock, or chose in action in the trustee or trustees of any charity or society over which the High Court would have jurisdiction upon suit duly instituted, whether the appointment of such trustee or trustees was made by instrument under a power or by the High Court under its general or statutory jurisdiction. Charity trustees.

139. The Judge in Lunacy may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised. Declarations and directions.

140. The fact that an order for conveying any land or releasing any contingent right has been founded upon an allegation of the personal incapacity of a trustee or mortgagee shall be conclusive evidence of the fact alleged in any court upon any question as to the validity of the order, but this section shall not prevent a Judge of the High Court from directing a re-conveyance of any lands or contingent right dealt with by the order, or from directing any party to any proceeding concerning such land or right to pay any costs occasioned by the order when the same appears to have been improperly obtained. Order to be conclusive evidence of allegation on which it is founded.

141. In every case in which the Judge in Lunacy has jurisdiction to order a conveyance or transfer of land or stock or to make a vesting order, he may also make an order appointing a new trustee or new trustees. Power to appoint new trustees.

142. The Judge in Lunacy may order the costs of and incident to obtaining an order under the provisions of this Act as to vesting orders and carrying the same into effect to be paid out of the land or personal estate or the income thereof in respect of which the order is made, or in such manner as the Judge may think fit. Costs.

Saving of
power of
High Court.

143. The provisions of this Act as to vesting orders shall not affect the jurisdiction of the High Court as to any lunatic trustee or mortgagee who is an infant.

Orders of Judge in Lunacy and Certificates of Masters

Office copies
to be
evidence.

144. Every office copy of the whole of an order or report confirmed by fiat purporting to be signed by a Master, and sealed or stamped with the seal of the Master's office, and every office copy of a certificate in lunacy shall at all times, and on behalf of all persons, and whether for the purposes of this Act or otherwise, be admitted as evidence of the order, report, or certificate of which it purports to be a copy, without any further proof thereof.

Money
orders to be
acted upon.

145. Where an order relates to the payment, transfer, carrying over, or depositing of any cash, stocks, funds, annuities, securities, or other effects into or in court to the credit of the matter of a lunatic, or to the payment, transfer, or carrying over, or other disposal by the Paymaster-General of any cash, stocks, funds, annuities, securities, or other effects standing in his name or deposited in his custody to the credit of the matter of a lunatic, or of any cash, stocks, funds, annuities, securities, or other effects to or in which a lunatic is entitled or beneficially interested, and which are not standing to the credit of a cause or matter depending in the High Court, the Paymaster-General and the Bank, and all other persons, shall act upon an office copy of the order.

Transfers to
be binding.

146. All transfers and payments made in pursuance of this Act under an order or a Master's certificate shall be valid and binding on all persons.

Forgery of
signature of
Master or
seal of
Master's
office.

147. If any person forges the signature of a Master, or forges or counterfeits the seal of the Master's office, or knowingly concurs in using any such forged or counterfeited signature or seal, or tenders in evidence any document with a false or counterfeit signature of a Master, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall upon conviction be liable to penal servitude for a term not exceeding seven years, or to be imprisoned for a term not exceeding three years with or without hard labour.

Percentage and Fees

Percentage
and fees.

148.—(1.) The Lord Chancellor, with the concurrence of the Treasury, may make rules fixing the percentage and fees payable in proceedings relating to lunatics and their estates, and regulating the mode in which the same are to be ascertained and paid.

(2.) Save as otherwise provided by the Rules in Lunacy the percentage and fees in lunacy shall be subject to the rules contained in section twenty-six of the Supreme Court of Judicature Act, 1875.

(3.) The percentage, or a proper proportionate part thereof (as the case may require) shall be charged upon the estate of a lunatic, and be payable thereout, although before payment thereof he die, or the inquisition be superseded, or be vacated and discharged on a traverse; but in either of the two last-mentioned cases the Judge in Lunacy may, if he thinks fit, remit or reduce the amount of the sum to be paid.

(4.) Where it is made to appear to the Judge in Lunacy that the property of a lunatic does not exceed seven hundred pounds in value, or that the income

thereof does not exceed fifty pounds per annum, he may order (if he thinks fit) that no fee shall be taken, or percentage levied, in relation to the proceedings in the matter or the property, as from the date of the order or such other time as he directs, during the continuance of the lunacy or until further order.

[“L. A., 1891, s. 27 (3).—The power conferred by section one hundred and forty-eight of the principal Act to make rules fixing percentage and fees shall be deemed to extend to all proceedings under the principal Act or this Act, whether relating to lunatics so found by inquisition or to any other person in relation to whom or to whose property an order under the said Acts has been or may be made. Provided that in the case of lunatics under the protection of the Judge in Lunacy by virtue of the transmission of the record of an inquisition from Ireland and its entry of record in the High Court, and in the case of persons residing out of England and declared lunatic according to the laws of their place of residence, no percentage shall be levied except upon income arising from property within the jurisdiction of the Judge in Lunacy and administered under his direction.”]

Extent of power to fix percentage and fees.

PART V

THE COMMISSIONERS IN LUNACY

Constitution of the Commission

150.—(1.) There shall continue to be Commissioners in Lunacy, and such of them as are qualified for appointment by being medical practitioners or barristers shall be entitled to receive salaries. The Commissioners in Lunacy.

(2.) The salaries of the paid Commissioners, and the expenses of the Commissioners to the amount sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

(3.) A Commissioner shall not, so long as he remains Commissioner and receives any salary in respect of his office, accept, hold, or carry on any other office or situation, or any profession or employment, from which any profit is derived.

151.—(1.) As often as a Commissioner dies, or is removed from his office, or is disqualified, or resigns, or refuses or becomes unable through illness or otherwise to act, the Lord Chancellor may appoint a person to be Commissioner in his place. Vacancies among the Commissioners may be filled.

(2.) Every person appointed in the place of a medical practitioner shall be a medical practitioner, and every person appointed in the place of a barrister shall be a practising barrister of not less than five years' standing, and every person appointed in the place of any other Commissioner shall be neither a medical practitioner nor a practising barrister. Provided that a medical or legal Commissioner may upon resigning his office be appointed to fill any vacancy among the unpaid Commissioners; and if so appointed he may, upon the request of any four of the Commissioners, perform any duty which he might have performed before his resignation. Provided also that the secretary for the time being of the Commissioners shall be eligible to be a Commissioner in the place of a barrister.

(3.) In case of the temporary illness or disability of a medical or legal Commissioner, the Lord Chancellor may, on the recommendation of the Commissioners, appoint a person qualified to be a medical or legal Commissioner to be his substitute so long as the illness or disability continues, and the substitute may exercise all the powers of the person for whom he acts.

(4.) The Commissioners for the time being may act notwithstanding any vacancy in their body.

(5.) Every Commissioner hereafter appointed shall, before he acts as Commissioner, make before the Lord Chancellor, or before any three Commissioners qualified to act, the declaration to be made by a Commissioner set forth in the First Schedule.

Licences and
instruments
to be sealed.

152.—(1.) All licences, orders, and instruments granted or made, or issued or authorised by the Commissioners, in pursuance of this Act, except such orders or instruments as are to be made or signed and sealed by one Commissioner or two or more Commissioners, shall be sealed with the seal of the Commission.

(2.) All such licences, orders, and instruments, or copies thereof, purporting to be sealed with the seal of the Commission, shall be received as evidence of the same respectively, and of the same respectively having been granted, made, issued, or authorised by the Commissioners, without any further proof thereof.

(3.) A licence, order, or instrument, or copy thereof, shall not be valid, or have any force or effect, unless it is so sealed.

Appointment
of permanent
chairman
and mode of
voting.

153.—(1.) There shall be a permanent chairman of the Commissioners.

(2.) If a permanent chairman dies, or declines or becomes incapable to act as chairman, or ceases to be a Commissioner, the Commissioners, or any five of them at a meeting specially summoned for the purpose, shall select a member of their body, not being a paid Commissioner, to be permanent chairman.

(3.) If the chairman is absent from a meeting, a majority of the members present may elect a chairman for that meeting.

(4.) Questions shall be decided by a majority of votes.

(5.) The chairman of the meeting shall have a vote, and in the event of an equality of votes he shall have a casting vote.

The secretary
to the Com-
missioners.

154.—(1.) There shall be a secretary to the Commissioners.

(2.) The secretary for the time being may be removed by the Lord Chancellor on the application of the Commissioners.

(3.) If the office of secretary is vacant, the Commissioners, with the approbation of the Lord Chancellor, may fill the vacancy.

(4.) The secretary shall, in the performance of his duties, be subject to the inspection, direction, and control of the Commissioners. His salary shall be of such amount as the Treasury, with the concurrence of the Lord Chancellor, determines.

(5.) Every person appointed secretary shall be a barrister of at least seven years' standing, and shall for all purposes be deemed to be a permanent civil servant of the State.

Clerks to
Commis-
sioners.

155.—(1.) The Commissioners may appoint such number of clerks as the Treasury sanctions.

(2.) The clerks to the Commissioners shall be paid such salaries as the Treasury assigns. The salaries of the Commissioners, secretary, and clerks,

and their expenses, to the amount sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

156. As respects superannuation allowances, the paid Commissioners and the secretary and clerks shall be subject to the provisions of the Superannuation Act, 1859, and the Superannuation Act, 1887.

Superannuation allowances.
22 Vict., c. 26.
50 & 51 Vict., c. 67.

157. Every secretary or clerk shall, before he acts, make before any one of the Commissioners the declaration to be made by the secretary and clerks of the Commissioners set forth in the First Schedule.

Secretary and clerks to make a declaration.

158.—(1.) A person shall not be qualified to be a Commissioner or secretary or clerk of the Commissioners if he is, or within one year prior to his appointment has been, interested in a licensed house.

Disqualification of Commissioners and their secretary and clerks.

(2.) If any Commissioner or the secretary or any clerk of the Commissioners becomes interested in a licensed house, he shall be disqualified to hold his office.

(3.) Any disqualified person continuing to act shall be guilty of a misdemeanor.

Meetings and Procedure

159.—(1.) The Commissioners, or some five of them, shall hold quarterly meetings at their office, or at such other place as the Lord Chancellor may direct, on the first Wednesday in the months of February, May, July, and November in every year, to receive applications for licences for houses for the reception of lunatics within the immediate jurisdiction of the Commissioners.

Commissioners to hold meetings for granting licences.

(2.) In case on any such occasion five Commissioners are not present, the meeting shall take place on the following Wednesday, and so on weekly until five Commissioners assemble.

(3.) The Commissioners assembled at every such meeting shall have power to adjourn the meeting from time to time and to such place as they think fit.

(4.) Any five of the Commissioners may, at any other time, at a meeting duly summoned, receive applications for licences.

160.—(1.) If a Commissioner by writing under his hand requires the secretary to call a meeting of the Commissioners for a purpose specified in the writing, or for general business, the secretary shall call a meeting.

Provision for calling meetings.

(2.) The secretary shall give to the Commissioners, or such of them as are in England and have an address known to the secretary, twenty-four hours' notice of the place, day, and hour of the meeting, and of the purpose for which it is to be held.

(3.) Any three Commissioners assembled at a meeting shall be a quorum, and shall constitute a board, except where by this Act five Commissioners are required to be present at any meeting.

(4.) Every meeting shall, as far as circumstances admit, be held at the office of the Commission.

161.—(1.) The Commissioners, or any five of them present at any quarterly or other meeting, may, by resolution sealed with their seal or entered in a book kept for the purpose and signed by five at least of the Commissioners present at the meeting, make orders and rules for regulating the duties of the Commissioners and of their secretary, clerks, and servants, and for the transaction of the business of the Commission.

Power to make orders and rules to regulate procedure.

(2.) The secretary shall give to each Commissioner, so far as circum-

stances admit, not less than seven days' notice of a meeting for the purpose of making orders or rules, and shall state in the notice the purpose of the meeting.

Reports and Records

Reports to be made to the Lord Chancellor.

162.—(1.) The Commissioners shall, at the expiration of every six months, report to the Lord Chancellor the number of visits they have made and the number of patients they have seen.

(2.) They shall also, in or before the month of June in every year, make to the Lord Chancellor a report made up to the end of the preceding year of the condition of the institutions for lunatics, and other places visited by them, and of the care of the patients therein, with such other particulars as they think deserving notice.

(3.) They shall lay copies of the reports to be made under this section before Parliament within one month after the same have been made if Parliament is then sitting, and if not, within twenty-one days after the commencement of the next session.

PART VI

VISITORS OF LUNATICS

The Chancery Visitors

Appointment and qualification of Chancery Visitors.

163.—(1.) There shall continue to be medical and legal visitors of lunatics so found by inquisition, and they are in this Act referred to as the Chancery Visitors.

(2.) The Lord Chancellor may, when a vacancy occurs in the office of medical visitor or legal visitor, appoint, by writing under his hand, a fit person, being a medical practitioner in actual practice, to succeed a medical visitor, and a fit person, being a barrister of not less than five years' standing, to succeed a legal visitor.

(3.) The visitors shall have such clerks and officers as the Lord Chancellor may, with the concurrence of the Treasury as to number and salaries, determine.

(4.) The salaries of the Chancery Visitors, their clerks and officers, and their expenses to the amount sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

Tenure of office by Chancery Visitors.

164. The Chancery Visitors may be removed by the Lord Chancellor in case of misconduct or neglect in the discharge of their duties, or of their being disabled from performing the same, and they shall not be engaged in the practice of their respective professions.

Visitors not to be interested in licensed houses.

165. A person shall not be appointed a Chancery Visitor if he is or has been within the two years preceding his appointment directly or indirectly interested in any licensed house; and if any person after his appointment becomes so interested, his appointment shall become void, and thereupon his salary shall cease.

Masters to be ex officio visitors.

166. The Masters for the time being shall by virtue of their office be visitors of lunatics so found by inquisition, jointly with the Chancery Visitors.

167.—(1.) The Chancery Visitors and the Masters, or so many of them, The Visitors and Masters to form a board. not being less than three in number, as may from time to time be able, consistently with the discharge of their other duties, to attend, shall from time to time form themselves into a board for their mutual guidance and direction on matters connected with the visiting of lunatics.

(2.) The board may report to the Lord Chancellor upon any matter connected with the duties of the Chancery Visitors or of the board, as they think proper.

168.—(1.) Where a medical or a legal Chancery Visitor is temporarily prevented from discharging his duty by illness or unavoidable absence, but not otherwise, he may, with the approbation of the Lord Chancellor, appoint a medical practitioner in actual practice, or a barrister of not less than five years' standing (as the case may require), to act in his stead during his illness or unavoidable absence. Medical or legal visitor may appoint a substitute.

(2.) The medical practitioner or the barrister so appointed shall, while his appointment remains in force, have, perform, and execute all the powers, duties, and authorities belonging to the office of medical or legal visitor (as the case may be) with full validity and effect to all intents and purposes.

Visiting Committees of Asylums

169.—(1.) For every asylum there shall be a visiting committee appointed annually by the local authority, consisting of not less than seven members. Constitution of visiting committee.

(2.) The visiting committee of a district asylum shall be constituted of the number of members fixed by the agreement under which the asylum is provided.

(3.) Where there is more than one asylum, the local authority may appoint one committee for the management and control of all the asylums, and such committee shall appoint a sub-committee for each separate asylum, and may delegate to that sub-committee such powers and duties as the committee from time to time think fit.

(4.) Where a county borough has contributed towards the cost of any county asylum, the council of the borough may, if they so desire, appoint to be members of the visiting committee of the asylum such number of members of the council as may be agreed upon, or in default of agreement be determined by the Commissioners under the Local Government Act, 1888, or after they have ceased to hold office, by arbitration under that Act. 51 & 52 Vict., c. 41. Such appointment shall be in substitution for any appointment previously made on the part of the borough.

(5.) Where a borough, not being a county borough, has contributed towards the cost of any county asylum, and the representatives of the borough on the county council are not entitled to vote for the appointment by the council of visitors of the asylum, the council of the borough may appoint two persons to be members of the committee.

(6.) During the continuance of a contract for the reception of the pauper lunatics of a county borough or borough specified in the Fourth Schedule into a county asylum, the council of the borough shall appoint a visiting committee to visit the lunatics sent from such county borough or borough in the asylum.

170. Unless some other day is appointed by the standing orders of the local authority, the visiting committee shall be appointed at the quarterly meeting of the local authority in November. Mode of election of visiting committee.

Vacancies to be filled up.

171.—(1.) If a visitor dies or resigns, or becomes incapable or disqualified to act, the authority by whom he was appointed shall, as soon as possible, appoint in his place some qualified person, and the new appointment shall be made in the same manner as the annual election of visitors.

(2.) The continuing members of a visiting committee may act notwithstanding any vacancy in the body.

Duration of office.

172.—(1.) A visiting committee shall hold office until the first meeting of their successors.

(2.) If default is made in electing a visiting committee, the visiting committee last elected shall continue in office as if they had been duly re-elected.

Examination of accounts.

173. The visiting committee of every asylum shall, previously to the month of June in every year, examine the accounts of the treasurer and clerk of the asylum, and shall report the same to the next meeting of the local authority, or of each local authority to whom the asylum wholly or in part belongs.

Members of visiting committee not to be interested.

174.—(1.) A member of a visiting committee shall not be interested either in his own name or in the name of any other person in any contract entered into or work done for the committee, and shall not derive any profit or emolument whatsoever from the funds of the asylum.

(2.) This provision shall not extend to any interest which a member of a visiting committee may have by reason of his being a shareholder of a company which has entered into any contract with or done any work for the visiting committee, but he shall not be entitled to vote in respect of such contract or work.

Meetings of visiting committee.

175.—(1.) The provisions of section eighty-two of the Local Government Act, 1888, with respect to the proceedings of committees of county councils shall apply to the proceedings of every visiting committee appointed wholly or partly by a county council, and the chairman of such committee may be elected accordingly.

(2.) To other visiting committees the following provisions shall apply :

- (a.) The members of the committee shall within one month after their election meet at some convenient place, to be named in a notice in writing given by two or more of such members, or by the clerk of the outgoing committee by the direction of two or more of such members ;
- (b.) Notices of meetings shall be given to each member personally, or left at his place of abode, or sent by post seven days at least before the time appointed for the meeting ;
- (c.) The members shall at the first meeting elect one of their number to be chairman of the committee ;
- (d.) The chairman shall preside at all meetings at which he is present. In case of his absence from any meeting the members present shall elect one of their number to be chairman of the meeting ;
- (e.) Any meeting may be adjourned from time to time and from place to place ;
- (f.) The committee shall meet as often as they may think fit ;
- (g.) A meeting may be adjourned by two members ; for all other purposes three members shall be a quorum ;
- (h.) Every question shall be decided by a majority of the votes of the

members present, and in the event of an equality of votes the chairman shall have a second or casting vote ;

- (i.) The clerk of the committee shall, whenever required in writing by the chairman or any two members of the committee, or by the manager of the asylum, and the chairman may whenever he thinks fit, summon a meeting of the committee.

176.—(1.) Every visiting committee shall appoint a clerk (who may also be the clerk to the asylum) at such salary as the committee think fit, and a clerk so appointed may be discharged, and in the event of a vacancy in the office a new clerk may be appointed. The clerk to the visiting committee shall, unless he be sooner discharged, continue in office so long as the committee continue in office. Clerk to
visiting
committee.

(2.) A visiting committee may sue and be sued in the name of their clerk, and an action by or against a visiting committee shall not abate by the death or removal of the clerk, but the clerk for the time being shall always be deemed the plaintiff or defendant in the action.

Visitors of Licensed Houses

177.—(1.) The justices of every county and quarter sessions borough not within the immediate jurisdiction of the Commissioners shall, whether there is a licensed house within the county or borough or not, annually appoint three or more justices, and also one medical practitioner, or more, to act as visitors of licensed houses within the county or borough and otherwise for the purposes of this Act. Justices to
appoint
visitors.

(2.) The visitors shall at their first meeting make before a justice the declaration required by this Act to be made by a Commissioner, with the necessary modification.

(3.) A person shall not be qualified to be a visitor or clerk, or assistant clerk to any visitor, who is or within one year prior to his appointment has been interested in a licensed house.

(4.) If a visitor or a clerk or assistant clerk to any visitors becomes interested in a licensed house he shall be disqualified to hold his office.

(5.) Any disqualified person continuing to act shall be guilty of a misdemeanor.

(6.) In case of the death, inability, disqualification, resignation, or refusal to act of any visitor, the justices of the county or borough may appoint a visitor in his place.

(7.) The annual appointment of visitors shall be made by justices of a county at their Michaelmas quarter sessions, and by justices of a borough at special sessions, to be held in the month of October ; other appointments may be made by justices of a county at any quarter sessions and by justices of a borough at special sessions to be held at the same time as any quarter sessions.

(8.) In any county or borough in which no appointment of visitors has been made before the commencement of this Act the first appointment shall be made, in the case of a county, at the quarter sessions next after the commencement of this Act, and in the case of a borough, at special sessions to be held at the same time as the next quarter sessions.

(9.) The clerk to the justices of a quarter sessions borough shall forthwith notify to the clerk of the peace of the borough the names, places of abode, and occupations or professions of all visitors appointed by the justices.

(10.) A list of the names, places of abode, and occupations or professions of all visitors of licensed houses shall, within fourteen days from the date of their appointment, be published by the clerk of the peace of the county or borough for which they are appointed in a local newspaper, and shall, within three days from the date of their appointment, be sent by the clerk of the peace to the Commissioners.

(11.) Every clerk of the peace making default in publishing and sending to the Commissioners the list of visitors within the time hereby limited, shall for every default be liable to a penalty not exceeding two pounds.

(12.) Every visitor, being a medical practitioner, shall be entitled to such remuneration for services rendered under this Act as the justices of the county or borough may approve.

Clerk to
visitors;
his duties
and remuneration.

178.—(1.) The clerk of the peace or some other person to be appointed by the justices for the county or borough shall act as clerk to the visitors.

(2.) The clerk to the visitors shall, at the first meeting of the visitors, make the declaration required by this Act to be made by the secretary of the Commissioners with the necessary modification, such declaration to be made before one of the visitors, being a justice.

(3.) The name, place of abode, occupation, and profession of the clerk to the visitors (whether he is the clerk of the peace or any other person), shall within fourteen days after the appointment be published by the clerk of the peace for the county or borough in some local newspaper, and shall within three days from the date of the appointment be communicated by the said clerk of the peace to the Commissioners.

(4.) Every clerk of the peace making default in either of the respects aforesaid shall for every such default be liable to a penalty not exceeding two pounds.

(5.) Every clerk to the visitors shall be allowed such salary or remuneration for his services as the justices for the county or borough direct.

Provision for
assistants to
the clerk of
the visitors.

179.—(1.) If the clerk to any visitors at any time desires to employ an assistant in the execution of the duties of his office, he shall certify his desire and the name of the assistant to one of the visitors, being a justice.

(2.) If the visitor approves of the assistant, the assistant shall make before the visitor the declaration to be made by assistants to the clerk to the visitors in the First Schedule.

(3.) Thereafter the clerk may, at his own cost, employ the assistant.

Consent of
recorder.

180. A visitor or clerk shall not be appointed by the justices of a borough without the consent in writing of the recorder of the borough.

Meetings of
visitors.

181.—(1.) The visitors shall meet at such times and places as they may think proper.

(2.) The clerk to the visitors shall, upon the direction of any two visitors, call a meeting of the visitors at such time and place as the two visitors may appoint.

(3.) The times and places of meeting shall be kept secret, and each meeting shall be held privately, and so that no manager or person interested in or employed about or connected with any house to be visited shall have notice of any intended visit.

Payment of
expenses of
visitors of
licensed
houses.

182. The expenses incurred by or under the order of any visitors of licensed houses in proceedings under this Act shall be paid out of the county or borough fund.

PART VII

VISITATION

Duties of Chancery Visitors

183.—(1.) The Chancery Visitors shall visit lunatics so found by inquisition at such times, and in such rotation and manner, and make such inquiries and investigations as to their care and treatment and mental and bodily health, and the arrangements for their maintenance and comfort, and otherwise respecting them, as the Rules in Lunacy, or as any special order of the Judge in Lunacy in any particular case, shall from time to time direct.

Duties of
Chancery
Visitors.

(2.) Provided that every lunatic shall be personally visited and seen by one of the Chancery Visitors twice at least in every year, and such visits shall be so regulated as that the interval between successive visits to any such lunatic shall in no case exceed eight months.

(3.) Provided also that every lunatic resident in a private house shall, during the two years next following inquisition, be visited at least four times in every year.

184.—(1.) The Chancery Visitors shall also visit such persons alleged to be lunatics, and shall make such inquiries and reports in reference to them as the Judge in Lunacy directs, and at the expiration of every six months they shall report to the Lord Chancellor the number of visits made, the number of patients seen, and the number of miles travelled during such months, and shall on the first of January in each year make a return to the Lord Chancellor of all sums received by them for travelling expenses, or upon any other account.

Chancery
Visitors to
visit alleged
lunatics.

(2.) A copy of every report and return under this section shall be laid before Parliament on or before the first of February in each year, if Parliament be then sitting, and if not, within twenty-one days next after the commencement of the next session.

185.—(1.) The Chancery Visitors shall respectively, within a convenient time after each visit, make a report in writing of the state of mind and bodily health and of the general condition and also of the care and treatment of each person visited, which reports shall, annually or oftener, as the Lord Chancellor directs or the board of visitors think expedient, be submitted to the Lord Chancellor.

Chancery
Visitors to
report to
Lord Chan-
cellor.

(2.) The Chancery Visitors respectively shall make separate or special reports on any case to the Lord Chancellor as and when they or the board of visitors think expedient, and in particular shall report to him, without delay, any instance in which, on proceeding to visit, they have been unable to discover the residence of or have been by any other circumstance prevented from actually seeing on that occasion the lunatic whom they intended to visit.

186.—(1.) The reports of the Chancery Visitors shall be filed and kept secret in their office, and shall not be open to the inspection of any person save the members of the board of visitors and the Judge in Lunacy, and such persons as he specially appoints.

Reports to
be kept
secret.

(2.) All the reports relating to any particular patient shall be destroyed on his death, and shall also be destroyed on the inquisition in his case being

superseded, or being vacated and discharged on a traverse, unless the Judge in Lunacy, within fourteen days after the supersedeas, or the vacating and discharge on a traverse, specially orders that the same be not destroyed until the lunatic's death.

Lunatics in Asylums

Visits by
Commissioners.

187.—(1) Two or more Commissioners, of whom one shall be a medical practitioner and one a barrister, shall once at least in each year visit every asylum, and shall inquire—

(a.) Whether the provisions of the law have been carried out—

(i) As to the construction of the building;

(ii) As to visitation;

(iii) As to management;

(iv) As to the regularity of the admission and discharge of patients;

(b.) Whether divine service is performed;

(c.) Whether any system of coercion is practised, and its result;

(d.) As to the classification of patients and the number of attendants on each class;

(e.) As to the occupations and amusements of the patients, and their effects;

(f.) As to the bodily and mental condition of the pauper patients when first admitted;

(g.) As to the dietary of pauper patients;

(h.) As to such other matters as to the visiting Commissioners seem fit.

(2.) Any one or more of the Commissioners may at any time visit any asylum with the like powers as are by this section given to two or more Commissioners.

Visits by
visiting
committee.

188. At least two members of the visiting committee shall together, once at least in every two months, inspect every part of the asylum, and see every patient therein, so as to give every one, as far as possible, full opportunity of complaint, and examine the order and certificate or certificates for the admission of every lunatic admitted since the last visitation, and the general books kept in the asylum; and shall enter in the visitors' book any remarks they think proper in regard to the condition and management of the asylum and the lunatics therein, and shall sign the book upon every visit.

Visits to
lunatics
received
under a
contract.

189.—(1.) During the continuance of a contract for the reception of the pauper lunatics of a county borough or other borough in a county asylum not less than two members of the visiting committee of the borough appointed for the purpose shall together, at least once in every six months, visit the asylum and see and examine the lunatics received under the contract, and shall report the result of their visit to the council of the borough.

(2.) The visitors may, if they think fit, be accompanied by a medical practitioner who is not an officer of the asylum, and they may by order direct payment to such medical practitioner of such a sum as they think fit for his services, and such sum shall upon the production of the order be paid to the medical practitioner by the treasurer of the borough.

(3.) Every report under this section shall be entered among the records of the council of the borough, and may be inspected by the Commissioners, and

the Commissioners may, if they think fit, require the town clerk of the borough to transmit to them a copy of any such report.

190.—(1.) The visiting committee of every asylum shall in every year lay before each local authority to which the asylum belongs, at their quarterly meeting in November, or at such other time as the local authority appoints, a report in writing of the state and condition of the asylum, and as to its sufficiency to provide the necessary accommodation, and as to its management and the conduct of the officers and servants and the care of the patients therein. Reports by visiting committee.

(2.) The committee may in the report make such remarks in relation to any matters connected with the asylum as they think fit.

Lunatics in Hospitals and Licensed Houses

191.—(1.) Every hospital and licensed house may at any time, by day or night, be visited by any one or more of the Commissioners. Visits of the Commissioners to licensed houses and hospitals.

(2.) Every licensed house within the immediate jurisdiction of the Commissioners shall be visited six times a year (namely)—

(a.) Four times by not less than two Commissioners, of whom one shall be a medical practitioner and one a barrister; and

(b.) Twice by one or more of the Commissioners.

(3.) Every licensed house not within the immediate jurisdiction of the Commissioners shall be visited twice a year by not less than two Commissioners, of whom one shall be a medical practitioner and one a barrister.

(4.) Every hospital shall be visited once a year by not less than two Commissioners, of whom one shall be a medical practitioner and one a barrister.

(5.) The visits of the Commissioners shall be made without previous notice.

(6.) Every visit shall be made on such day or days, and at such hours, and for such length of time, as the visiting Commissioners or Commissioner may, subject to any direction of the Commissioners, think fit.

(7.) The Lord Chancellor, on a representation by the Commissioners setting forth the expediency of the alteration, may by writing under his hand direct that during a specified period, or until the direction is revoked, the Commissioners shall not be required—

(a.) To visit a house licensed by justices more than once a year;

(b.) To visit a house licensed by the Commissioners and not receiving pauper patients more than twice a year.

192. The visiting Commissioners at their first visit to a house licensed by justices after the grant or renewal of the licence shall examine the licence, and if the same is in conformity with this Act shall sign the same, or if it is informal shall enter in the visitors' book in what respect it is informal. Inspection of licence.

193.—(1.) Every licensed house within the jurisdiction of visitors appointed by justices may at any time, by day or night, be visited by one or more of the visitors. Visits of visitors to licensed houses.

(2.) Every such house shall be visited—

(a.) Four times a year by not less than two of the visitors, of whom one shall be a medical practitioner; and

(b.) Twice a year by one or more of the visitors.

194.—(1.) The visiting Commissioners and visitors shall, at every visit to a hospital and licensed house which they are by this Act required to make, and Inspections and inquiries.

any one or more of the Commissioners or visitors may at any other visit do all or any of the following things :

- (a.) Inspect any or every part of the building where lunatics are received, and every building communicating therewith or detached therefrom, but not separated by ground belonging to any other person, and every part of the ground and appurtenances held, used, or occupied therewith :
- (b.) See every patient and inquire whether any patient is under restraint, and why :
- (c.) Inspect the order and certificates or certificate for every patient received since the last visit :
- (d.) Consider the observations made in the visitors' book :
- (e.) Enter in the visitors' book a minute of the condition of the house, of the patients therein, and the number of patients under restraint, with the reasons thereof :
- (f.) Inquire—

When divine service is performed, and to what number of patients and its effect ;

What occupations and amusements are provided for the patients, and the results thereof ;

How the patients are classified ;

As to the condition of the pauper patients when first admitted ;

As to the diet of the pauper patients ;

As to the moneys paid to the manager on account of any lunatic under his care ;

As to such other matters as may in their opinion require investigation.

(2.) The result of the foregoing inspections and inquiries, with such observations as may be thought proper, shall be entered in the visitors' book.

(3.) Each visiting Commissioner or visitor may at any visit enter in the patients' book such observations as he thinks fit as to the state of mind or body of any patient, and any irregularity which exists in any order or certificates, and also whether the suggestions (if any) made at any previous visit have been attended to, and any observations which may be thought proper.

Managers of hospitals and licensed houses to show every part and every patient to the visiting Commissioners and visitors.

195.—(1.) The manager of every hospital or licensed house shall show to each Commissioner and visitor visiting the same every part thereof, and every person therein detained as a lunatic.

(2.) Every manager of a hospital or licensed house who conceals or attempts to conceal, or refuses or wilfully neglects to show, any part of the building, or any building communicating therewith or detached therefrom, but not separated as aforesaid, or any part of the ground or appurtenances held, used, or occupied therewith, or any person detained, or being therein, from any one or more of the visiting Commissioners or visitors, or from any person authorised under this Act to visit and inspect the hospital or house, or the patients therein or any of them, or who does not give full and true answers to the best of his knowledge to all questions which any visiting Commissioner or visitor asks in the execution of his office, shall be guilty of a misdemeanor.

Books and documents to be produced to

196.—(1.) The manager of every hospital or licensed house shall lay before the visiting Commissioners or Commissioner, or the visitors or visitor, at each visit—

- (a.) A list of all the patients then in the hospital or house (distinguishing pauper patients from other patients, and males from females, and specifying such as are deemed curable) visiting Commissioners and visitors.
- (b.) The several books by this Act or any rules under this Act required to be kept by the manager and by the medical officer of a hospital or licensed house :
- (c.) All orders and certificates relating to patients admitted since the last visit :
- (d.) In the case of a licensed house the licence then in force :
- (e.) All other orders, certificates, documents, and papers relating to any of the patients at any time received into the hospital or licensed house which may be required to be produced.

(2.) Each visiting Commissioner or visitor shall sign the said books as having been produced.

197.—(1.) Every Commissioner visiting a house licensed by justices shall carefully consider and give special attention to the state of mind of any patient, as to the propriety of whose detention there is a doubt or as to whose sanity their attention is specially called, and shall, if the state of mind of such patient is considered doubtful, and the propriety of his detention requires further consideration, make and sign a minute thereof in the patients book. Entries in the patients' book as to doubtful patients.

(2.) A copy of every such minute shall, within two clear days after the same has been made be sent by the manager of the house to the clerk of the visitors of the house, and the clerk shall forthwith communicate the same to the visitors, or some two of them (of whom one shall be a medical practitioner), and the visitors shall thereupon immediately visit the patient and act as they think fit.

(3.) Every manager who omits to send a copy, as hereinbefore directed, of every such last-mentioned minute, and every clerk who neglects to communicate the same to two of the visitors as aforesaid, shall be guilty of a misdemeanor.

Visits to Single Patients

198. One or more of the Commissioners shall once at least in every year visit every unlicensed house in which a single patient is detained as a lunatic, and inquire into and report to the Commissioners on the treatment and state of bodily and mental health of the patient. Annual visit to single patient.

199.—(1.) Any one Commissioner, on the direction of the Commissioners, or of any two of them (of whom the one Commissioner may be one), may at all reasonable times visit a single patient, and inquire into and report to the Commissioners or the Lord Chancellor on the treatment and state of health, both bodily and mental, of the patient, and as to the moneys paid on his account. Power to visit single patients, and report.

(2.) Any one or more of the visitors appointed for any county or borough shall, upon the request in writing of the Commissioners, or any two of them, have the like power as regards any single patient detained in an unlicensed house in such county or borough.

(3.) Upon every visit under this section the medical journal shall be produced to the person making the visit, and he shall sign the same.

(4.) Every report under this section shall be kept by the secretary of the

Commissioners, and a copy thereof shall, if the Commissioners think it expedient, be laid before the Lord Chancellor.

Power to inspect.

200.—(1.) Any Commissioner visiting an unlicensed house may inspect any part of the house and the grounds belonging thereto.

(2.) If the person having charge of a single patient refuses to show to any Commissioner, at his request, any part of the house wherein the single patient resides, or any part of the grounds belonging thereto, he shall be guilty of a misdemeanor.

Visits to Paupers in certain Cases

Visits to paupers in institutions for lunatics.

201.—(1.) A medical practitioner appointed by the guardians of a union, and also the guardians of any union shall be permitted, whenever they see fit, between eight in the morning and six in the evening, to visit and examine any pauper lunatic chargeable to the union confined in any institution for lunatics, unless the medical officer of the institution delivers to the person or persons intending to make the visit a statement signed by him certifying that for the reasons set forth in the statement the visit would be injurious to the lunatic.

(2.) The medical officer shall forthwith enter in the medical journal the reasons set forth in the statement, and shall sign the entry.

Visits to pauper lunatics not in an institution for lunatics.

202.—(1.) Every pauper lunatic not in an institution for lunatics shall once in every quarter of a year (reckoning the several quarters as ending on the thirty-first of March, the thirtieth of June, the thirtieth of September, and the thirty-first of December) be visited, if not resident in a workhouse, by the medical officer of the union, or district in which the lunatic is resident, and, if resident in a workhouse, by the medical officer of the workhouse.

(2.) The guardians of every union shall from time to time furnish to every medical officer of the union forms for the prescribed returns relating to pauper lunatics not in an institution for lunatics.

(3.) Where a pauper lunatic has, by order of the visiting committee, been delivered over to the custody of a relative or friend to whom an allowance is made for the maintenance of the lunatic, the medical officer of the union or district in which the lunatic resides shall, within three days after each quarterly visit, send to the visiting committee a report stating whether in his opinion the lunatic is properly taken care of, and may properly remain out of an asylum.

(4.) Each medical officer shall be paid two shillings and sixpence for each quarterly visit to a pauper not in a workhouse, and in addition two shillings and sixpence for every report sent to a visiting committee under this section, and those sums shall be paid by the same persons and be charged to the same account as the relief of the pauper.

(5.) Nothing in this section shall relieve any medical officer from any obligation under this Act to give notice to a relieving officer or overseer when it appears to such medical officer that a pauper lunatic ought to be sent to an asylum.

Visitation of workhouses.

203. Any one or more of the Commissioners shall, on such day or days, and at such hours in the day, and for such length of time as he or they may think fit, visit all such workhouses in which there is or is alleged to be any lunatic, as the Commissioners by any resolution direct, and shall inquire whether the provisions of the law have been carried out, and also as to the

dietary, accommodation, and treatment of the lunatics, and shall report in writing thereon to the Commissioners, and the Commissioners shall forward a copy of every such report to the Local Government Board.

Special Visits

204.—(1.) If, for reasons to be entered on the minutes of the board, any case appears to the Commissioners to call for immediate investigation, they may by order direct any competent person or persons to visit and report upon the mental and bodily condition of any lunatic or alleged lunatic in any institution for lunatics or workhouse, or under the charge of any person as a single patient, and to inquire into and report upon any matters into which the Commissioners are authorised to inquire.

Power to appoint a person to inquire into cases requiring immediate investigation.

(2.) Every such person shall, for the special purposes mentioned in the order, have all the powers of a Commissioner.

(3.) The Commissioners may allow to any such person a reasonable sum for his services and expenses.

205.—(1.) The Lord Chancellor in the case of a lunatic so found by inquiry, and the Lord Chancellor or a Secretary of State in any other case, may at any time, by an order in writing under the hand of the Lord Chancellor or the Secretary of State, as the case may be, directed to the Commissioners or any of them, or to any other person, require the persons or person to whom the order is directed to visit and examine a lunatic or alleged lunatic, and to inspect any place in which a lunatic or alleged lunatic is detained, and to report to the Lord Chancellor or to a Secretary of State upon such matters as in the order are directed to be inquired into.

Visits to lunatics so found, and other lunatics.

(2.) Every person (not being a Commissioner) employed under this section may be paid such sum of money for his services as the Lord Chancellor or a Secretary of State thinks reasonable.

(3.) Every person so employed, whether a Commissioner or not, shall be allowed his reasonable travelling or other expenses while so employed.

(4.) Sums payable under this section shall be paid out of moneys provided by Parliament.

Lunatics in Private Families and Charitable Establishments

206.—(1.) If it comes to the knowledge of the Commissioners that any person appears to be without an order and certificates detained or treated as a lunatic or alleged lunatic by any person receiving no payment for the charge, or in any charitable, religious, or other establishment (not being an institution for lunatics), they may require the person by whom the patient is detained, or the superintendent or principal officer of the establishment, to send to them, within or at such time or times as the Commissioners may appoint, a report or periodical reports by a medical practitioner of the mental and bodily condition of the patient, with all such other particulars as to him and his property as they think fit.

Lunatics in private families and charitable establishments.

(2.) Any one or more of the Commissioners may at any time visit any such patient and report the result of the visit to the Commissioners, and may exercise, with respect to such patient, all the powers (except that of discharge) given to them as to persons confined in any institution for lunatics, or as single patients.

(3.) The Commissioners may, if they think fit, transmit any reports

received by them, or may report the results of any inquiries made by them under this section, to the Lord Chancellor, who may thereupon make an order for the discharge of the patient from the custody in which he is detained, or for his removal to an institution for lunatics, or to such other custody as he may think fit, and the expenses properly incurred of carrying any such order into effect and of maintaining the patient if so removed shall, if the order so directs, be paid by the guardians of the union in which the patient was found, until the authority legally liable for his maintenance has been ascertained; and such guardians shall have the same right to recover any such expenses paid by them against the lunatic and his estate, and the person or authority legally liable for his maintenance as in the case of orders for maintenance under this Act.

(4.) Where an order is made by the Lord Chancellor under this section for removal of a lunatic to an asylum, any justice of the county or borough in which the asylum is may exercise all the authorities conferred upon a justice by this Act, for the purpose of making the lunatic's property applicable to his maintenance and for maintaining him as a pauper.

(5.) All reports and particulars sent to the Commissioners under this section shall be kept by them, and shall be open to inspection only by the Commissioners and the Lord Chancellor, and by such persons as the Lord Chancellor directs.

PART VIII

LICENSED HOUSES AND HOSPITALS

Restrictions on New Licences

Restrictions
on new
licences.

207.—(1.) If the Commissioners in the case of a house within their immediate jurisdiction, or in the case of a house licensed by justices the justices, are of opinion that a house licensed for the reception of lunatics has been in all respects well conducted by the licensees, the Commissioners or justices may upon the expiration of the licence renew the licence for that house to the former licensees, or any one or more of them, or to their successors in business.

(2.) If on the twenty-sixth of August, one thousand eight hundred and eighty-nine, the licensees of any house had made arrangements to establish a new house for the reception of lunatics in the place of an existing house, and the Commissioners, or if the existing house was within the jurisdiction of justices the justices, are of opinion that such new house will be as well suited for the purpose as the existing house, and are also of opinion that the existing house has been in all respects well conducted, the Commissioners or justices may grant to the licensees of the existing house, or any one or more of them, a licence for the new house, and may renew the same to the original licensees, or any one or more of them, or to his or their successors in business.

(3.) If at any time it is shown to the satisfaction of the Commissioners or the justices, as the case may be, that it would be for the comfort and advantage of the patients in any licensed house that another house should be substituted in place thereof, the Commissioners or justices may grant to the

licensees of such first-mentioned house a licence in respect of such other house upon and subject to the same conditions and restrictions as may have existed in respect of the first-mentioned house.

(4.) In the case of joint licensees or proprietors who desire to carry on business apart from one another, if, in the opinion of the Commissioners or of the justices, as the case may be, the establishment conducted by them jointly, and also any new house which any of them desires to conduct, answers the conditions hereinbefore required for granting renewed licences, the Commissioners or justices, as the case may be, may grant to each of such licensees or proprietors renewed licences for such number of patients (not exceeding in the aggregate the number allowed by the joint licence) as such joint licensees or proprietors agree upon, or, failing their agreement, as the Commissioners or justices determine.

(5.) Where the licensee of a house is a medical man in the employment of the proprietor of such house as his manager, the licence shall be transferable or renewable to such licensee so long as he continues manager of the house, or to the proprietor, or to any other medical manager while employed by the proprietor in the place of the former manager.

(6.) Save as in this section provided, no new licence shall be granted to any person for a house for the reception of lunatics, and no house in respect of which there is at the passing of this Act an existing licence shall be licensed for a greater number of lunatics than the number authorised by the existing licence.

Jurisdiction of Commissioners and Justices

208.—(1.) The Commissioners shall exercise the licensing jurisdiction under this Act as regards the places mentioned in the third schedule which are to be deemed within their immediate jurisdiction.

Places within immediate jurisdiction of Commissioners.

(2.) In all places not within the immediate jurisdiction of the Commissioners the justices for every county and quarter sessions borough shall be the licensing justices, and shall at quarter or special sessions respectively have the same authority within their counties and boroughs to license houses for the reception of lunatics as the Commissioners within their immediate jurisdiction.

(3.) A person shall not act in granting any licence if he is, or within one year next preceding has been, interested in a licensed house.

209. For the purposes of this Part of this Act the justices of every borough shall assemble in special sessions at such times as the quarter sessions for the borough are held.

Borough justices to hold special sessions.

Conditions on which Licences granted

210. Before a licence is in any case provided for by this Act granted for a house not within the immediate jurisdiction of the Commissioners and not previously licensed, one or more of the Commissioners shall by inspection ascertain whether the house and its appurtenances are suitable for the reception of lunatics, and the Commissioners shall report thereon to the clerk of the peace of the county or borough, and the report shall be received and considered by the justices.

Before grant of a new licence by justices Commissioners to inspect and report.

211. A licence shall not be granted unless the licensee or one of the licensees undertakes to reside in the house.

Licensee to reside.

Licence to
joint
licensees.

212. In the case of a licence granted to two or more persons, if before the expiration of the licence any of such persons dies leaving the others surviving, and one of the survivors has undertaken or within ten days after the death gives to the Commissioners or the justices who granted the licence a written undertaking to reside on the licensed premises, the licence shall remain in force and have the same effect as if granted to the survivors.

Notice of
additions and
alterations.

213. No addition or alteration shall be made to any licensed house or the appurtenances without the previous consent in writing of the Commissioners, and also of two of the visitors in the case of a house within the jurisdiction of visitors.

Untrue
statement
a misde-
meanor.

214. If any person, for the purpose of obtaining a licence or the renewal of a licence for a house for the reception of lunatics, wilfully supplies to the Commissioners or justices any untrue or incorrect information, plan, description, statement, or notice, he shall be guilty of a misdemeanor.

A copy of
licence
granted by
justices to be
sent to the Com-
missioners.

215.—(1.) Within seven days after the grant of a licence by the justices of a county or borough the clerk of the peace of the county or borough shall send a copy thereof to the Commissioners.

(2.) Any clerk of the peace omitting to send such copy within such time shall for every such omission be liable to a penalty not exceeding forty shillings.

Stamps on
licences.

216. Licences and renewed licences shall be stamped with a ten-shilling stamp, and shall be under the seal of the Commissioners, if granted by them, and if by any justices under the hands of three or more of them in quarter or special sessions assembled, and shall be granted for such period, not exceeding thirteen months, as the Commissioners or justices, as the case may be, think fit.

Charge for
licences.

217.—(1.) For every licence there shall be paid to the secretary of the Commissioners, or to the clerk of the peace, according as the licence is granted by the Commissioners or justices (exclusive of the stamp), the sum of ten shillings for every patient not being a pauper, and the sum of two shillings and sixpence for every patient being a pauper.

(2.) If the total amount of such sums of ten shillings and two shillings and sixpence does not amount to fifteen pounds, then so much more shall be paid as makes up fifteen pounds.

(3.) If the period for which a licence is granted is less than thirteen months, the Commissioners or the justices may reduce the payment to any sum not less than five pounds.

(4.) The payment for a licence for a new house granted upon the transfer of patients from a licensed house shall be not less than one pound (exclusive of the stamp).

(5.) No licence shall be delivered until the sum payable for the same has been paid.

Incapacity
or death of
the person
licensed.

218.—(1.) If a person to whom a licence has been granted becomes by sickness or other sufficient reason incapable of keeping the licensed house, or dies before the expiration of the licence, the Commissioners or any three justices for the county or borough, as the case may be, may, if they think fit, by writing endorsed on the licence under the seal of the Commissioners or under the hands of such three justices, transfer the licence, with all the privileges and obligations annexed thereto, for the term then unexpired, to such person as the Commissioners or justices approve.

(2.) Where a licence is transferred by justices of a county or borough

under this section, the clerk of the peace of the county or borough shall within three days after the date of the instrument of transfer send a copy thereof to the Commissioners.

(3.) A clerk of the peace who makes default in performing the duty imposed upon him by this section shall, for each day during which the default continues, be liable to a penalty not exceeding forty shillings.

219. In cases in which under this Act a house not previously licensed is to be substituted for a licensed house, unless the substitution is occasioned by fire or tempest, seven clear days' notice of the intended substitution shall be sent to the person on whose petition the reception order of each private patient was made, or to the person by whom the last payment on account of the patient was made, and to the authority liable for the maintenance of each pauper patient.

Notice on
change of
house.

220. If a licensee receives into his licensed house any patients beyond the number specified in the licence, or fails to comply with the regulations of the licence as to the sex of the patients or the class of patients, he shall for each patient received contrary to his licence forfeit fifty pounds.

Penalty for
infringing
licence.

221.—(1.) If a majority of the justices of a county or quarter sessions borough in quarter or special sessions assembled recommend to the Lord Chancellor that any licence granted by the justices for such county or borough be revoked, or if the Commissioners recommend to the Lord Chancellor that any licence granted either by them or by any justices be revoked, or if granted by any justices be not renewed, the Lord Chancellor may, by an instrument under his hand and seal, revoke or prohibit the renewal of the licence.

Power of
revocation
and pro-
hibition of
renewal
of licences.

(2.) A revocation of a licence shall take effect at a date to be named in the instrument of revocation, not more than two months from the time when a copy or notice thereof has been published in the London Gazette.

(3.) A copy or notice of the instrument of revocation shall be published in the London Gazette, and shall, before publication, be transmitted to the manager of the licensed house, or shall be left at the licensed house.

(4.) In case of any such revocation or prohibition to renew being recommended to the Lord Chancellor, notice thereof in writing shall, seven clear days previously to the transmission of such recommendation to the Lord Chancellor, be given to the manager, or left at the licensed house.

222. If after the lapse of two months from the expiration or revocation of the licence of any house there are in the house two or more lunatics, every person keeping the house or having the care or charge of the lunatics therein shall be guilty of a misdemeanor.

Detention of
lunatics after
expiration or
revocation
of a licence a
misdemeanor.

223. The powers of the Commissioners and visitors with reference to any licensed house and the patients therein, and all powers and provisions of this Act having reference to the discharge, removal, and transfer of the patients, shall, after the expiration or revocation of the licence, continue in force so long as any patients are detained therein as lunatics.

Powers to
continue so
long as any
lunatics
detained.

Application of Fees for Licences

224.—(1.) All moneys received for licences granted by any justices shall be paid by the clerk of the peace for the county or borough into the county or borough fund.

Application
of moneys
received for
licences by

clerks of the
peace.

(2.) The clerk of the peace for every county or borough shall keep an account of all moneys received and paid by him as aforesaid, and of all moneys otherwise received or paid by him in the execution of this Act.

51 & 52 Vict.,
c. 41.

(3.) Such account shall be made up to the thirty-first day of March in each year, or to such other date as the Local Government Board appoint, and shall be signed by two at least of the visitors for the county or borough; and in the case of the clerk of the peace of a county, shall be audited by the same person, in the same manner, and with the same incidents and consequences as the accounts of officers of the county council under the Local Government Act, 1888.

Balance of
payments
over receipts
may be paid
out of the
funds of the
county or
borough.

225.—(1.) The justices of every county or borough in quarter or special sessions may order such sums as may be reasonable for payment of the remuneration or salary of the visitors and their clerk, and of all other expenses incurred by or under the authority of the justices or visitors in the execution of this Act, to be paid to the clerk of the peace of the county or borough out of the county or borough fund.

(2.) Every such sum shall be paid out of the county or borough fund by the treasurer thereof, and shall be allowed in his accounts, on the authority of the order by the justices for the payment thereof.

(3.) Every sum ordered to be paid by justices of a county under this section shall be subject to the sanction of the standing joint committee of the county council and quarter sessions as provided by section sixty-six of the Local Government Act, 1888.

Management of Licensed Houses

Commission-
ers may make
regulations
for the
government
of licensed
houses.

226. The Commissioners, with the sanction of a Secretary of State, may make regulations for the government of any licensed house; and such regulations of the Commissioners, or a copy thereof, shall be transmitted by their secretary to the manager of every licensed house to which the same relate, and shall be observed therein.

Plans to be
hung up.

227. There shall be hung up in some conspicuous part of every licensed house a copy of the plan given to the Commissioners or justices on applying for the licence.

Provision for
residence
and visits of
medical
attendants.

228.—(1.) In every house licensed for one hundred patients, or more, there shall be resident as the manager and medical officer thereof a medical practitioner.

(2.) Every house licensed for less than one hundred and more than fifty patients (in case the house is not kept by or has not a resident medical practitioner) shall be visited daily by a medical practitioner.

(3.) Every house licensed for less than fifty patients (in case the house is not kept by or has not a resident medical practitioner) shall be visited twice a week by a medical practitioner.

(4.) The visitors of any licensed house may direct that such house, and the Commissioners may direct that any licensed house shall be visited by a medical practitioner at any other time or times, not being oftener than once a day.

(5.) When a house is licensed to receive less than eleven lunatics, any two of the Commissioners or any two of the visitors of such house may, if they think fit, by any writing under their hands, permit the house to be visited by

a medical practitioner at such intervals more distant than twice a week as the Commissioners or visitors appoint, but not at a greater interval than once in every two weeks.

229.—(1.) The manager of a licensed house may, with the previous consent in writing of two of the Commissioners, or, where the house is licensed by justices, of two of the justices, receive and lodge as a boarder for the time specified in the consent any person who is desirous of voluntarily submitting to treatment; after the expiration of which time (unless any further consent is in like manner given for the extension thereof) he shall be discharged. The manager of a licensed house may also, with such previous consent as aforesaid, receive and lodge as a boarder, for the time specified in the consent, any relative or friend of a patient. Boarders in licensed houses.

(2.) The consent of the Commissioners or justices, as the case may be, shall be given only upon application to them by the intending boarder.

(3.) The total number of patients and boarders in a licensed house shall at no one time exceed the number of patients for which the house is licensed.

(4.) Every boarder shall, if required, be produced to the Commissioners and visitors respectively on their respective visits.

(5.) A boarder may leave the licensed house in which he is a boarder upon giving to the manager thereof twenty-four hours' notice in writing of his intention so to do.

(6.) If any person is not allowed to leave the licensed house in which he is a boarder after the expiration of twenty-four hours' notice to the manager thereof of his intention so to do, he shall be entitled to recover from the manager ten pounds as liquidated damages for each day or part of a day during which he is detained.

["L. A., 1891, s. 20. Where a boarder is received into a licensed house not within the immediate jurisdiction of the Commissioners in Lunacy, or into a registered hospital, notice of his reception shall be given to the Commissioners in Lunacy within twenty-four hours of his reception by the manager of the licensed house or hospital into which such boarder has been received. Notice of reception of boarders into licensed houses and hospitals."]

"If any manager fails to comply with the provisions of this section he shall, for each day or part of a day during which the default continues, be liable to a penalty not exceeding five pounds.

"If the Commissioners after inquiry are of opinion that the mental state of any boarder received into a licensed house or hospital is such as to render him unfit to remain as a boarder, they may order the manager of the licensed house or hospital either to remove such boarder or to take steps to obtain an order for his reception as a patient into the licensed house or hospital.

"Any manager failing to comply with an order of the Commissioners in Lunacy made pursuant to this section shall, for each day during which the default continues, be liable to a penalty not exceeding five pounds.""]

Hospitals

230. Every hospital for the reception of lunatics shall have a medical practitioner resident therein as the superintendent and medical officer thereof. Hospitals to have a resident medical attendant.

231.—(1.) When application is made for the registration of a hospital for Provisions

for registration of hospitals in which lunatics are received.

the reception of lunatics, the Commissioners may depute any one or more members of their body, or may employ such person or persons as they think fit, to inspect the hospital and report to them thereon.

(2.) If the Commissioners are of opinion that the hospital ought not to be registered for the reception of lunatics, they shall make a written report to a Secretary of State, stating the reasons for such opinion, and the Secretary of State shall thereupon finally determine whether the hospital ought to be registered or not.

(3.) If the Commissioners are of opinion or a Secretary of State determines that the hospital ought to be registered, the Commissioners shall issue a provisional certificate of registration.

(4.) A provisional certificate shall be valid for six months from the date of its issue, and for such extended time as the Commissioners allow unless before its expiration it is superseded by a complete certificate of registration.

(5.) Within three months from the date of the provisional certificate the managing committee of the hospital shall frame regulations for the hospital, and shall submit the same to a Secretary of State for approval.

(6.) Upon approval of the regulations by a Secretary of State, the Commissioners shall issue a complete certificate of registration, and shall specify therein the total number of patients of each sex who may be received in the hospital.

(7.) As from the date of a provisional certificate lunatics may be received in the hospital, but if no complete certificate of registration is granted, then no lunatic shall be received or detained in the hospital after the expiration of the provisional certificate.

(8.) The total number of patients and boarders, if any, in a hospital shall at no one time exceed the number of patients for which the hospital is certified.

(9.) No lunatic shall be received in any hospital unless the same has been registered before the passing of this Act, or is registered under a provisional or complete certificate by virtue of this Act.

(10.) The superintendent of any hospital who receives or detains any lunatic in the hospital contrary to the provisions of this Act, or to the terms of the complete certificate of registration, shall be guilty of a misdemeanor.

Regulations.

232.—(1.) The regulations for the time being in force in a hospital shall be observed.

(2.) Such regulations shall be printed, and a copy thereof shall be sent to the Commissioners, and another copy hung up in the visitors' room in the hospital.

(3.) If the regulations are not so sent and hung up, the superintendent shall be liable to a penalty not exceeding twenty pounds.

Hospitals may alter regulations.

["L. A., 1891, s. 12. The managing committee of every hospital may, with the approval of a Secretary of State, alter the regulations of the hospital."]]

Buildings not shown on plans not to be used for accommodation of lunatics.

233.—(1.) No building in the occupation of the managing committee of a registered hospital not shown on the plans sent to the Commissioners pursuant to any rules made by them shall be deemed part of the hospital for any purpose connected with the reception or the care and treatment of lunatics.

(2.) If the superintendent of a registered hospital knowingly permits any lunatic to be detained or lodged in any building not shown on the plans of the

hospital sent to the Commissioners, he shall be deemed guilty of a misdemeanor.

234.—(1.) The accounts of every registered hospital which does not submit its accounts to the Charity Commissioners shall be audited once a year by an accountant or other auditor to be approved by the Lunacy Commissioners, and shall be printed.

Accounts to be audited and printed.

(2.) The Lunacy Commissioners may, if they think fit, prescribe the form in which the accounts of any registered hospital are to be kept, and the day of the year to which they are to be made up.

235. The managing committee of any hospital may grant to any officer or servant who is incapacitated by confirmed illness, age, or infirmity, or who has been an officer or servant in the hospital for not less than fifteen years and is not less than fifty years old, such superannuation allowance, not exceeding two thirds of the salary of the superannuated person, with the value of the lodgings, rations, or other allowances enjoyed by him, as the committee think fit.

Superannuation allowance of officer of hospital.

236. The following persons shall be disqualified from being members of the managing committee of a registered hospital:

(a.) Any medical or other officer of the hospital;

(b.) Any person who is interested in or participates in the profits of any contract with or work done for the managing committee of the hospital, but so that this disqualification shall not extend to a person who is a member of an incorporated company which has entered into a contract with or done any work for the managing committee.

Persons disqualified to be members of managing committee of hospital.

237.—(1.) The Commissioners may require the superintendent or any other officer of a registered hospital to give them such information as the Commissioners think fit as to the mode in which the regulations of the hospital are carried out.

Powers for enforcing regulations of hospitals.

(2.) If the Commissioners are of opinion that the regulations are not properly carried out, they may give to the superintendent and any two members of the managing committee of the hospital notice stating the particulars in which the regulations are not properly carried out, and requiring such things to be done as the Commissioners think proper for carrying out the same.

(3.) If at the expiration of six months from the date of the notice the requirements of the notice have not, in the opinion of the Commissioners, been complied with, the Commissioners, with the consent in writing of a Secretary of State, may make an order directing the hospital to be closed as from the date named in the order, so far as the reception and detention of lunatics is concerned.

(4.) If any lunatics are detained or kept in the hospital after the date appointed by the order for closing the hospital, the superintendent of the hospital shall be guilty of a misdemeanour.

(5.) Before an order is made under this section, the Commissioners shall send to the superintendent and any two members of the managing committee of the hospital notice in writing requiring them to state in writing within fourteen days the reasons why the requirements of the first notice have not been complied with; and such statement, if any, shall be laid before the Secretary of State.

[“L. A., 1891, s. 21. If complaints are made by persons resident in the neighbourhood of any hospital that the patients are allowed to go outside the

Complaints as to control of patients

hospital without a sufficient number of officers to control them, or that the patients are allowed to wander at large without any control, the Commissioners may, if they are satisfied that there are *prima facie* grounds for such complaints, inquire into the same, and may make such order in relation thereto as the Commissioners think just, and the superintendent of any hospital disobeying any such order shall be guilty of a misdemeanor.”]

Removal of
lunatic
becoming a
pauper.

[“L. A., 1891, s. 19.—(1.) Where a lunatic in a hospital or licensed house becomes a pauper, the manager of the hospital or house may, after having given notice to the authority liable for the maintenance of the lunatic of his intention so to do, apply to a justice of the peace having jurisdiction in the place where the hospital or house is situate for an order for the removal of the lunatic, and such justice may, if he thinks fit, make an order for the removal of the lunatic to an institution for lunatics to which pauper lunatics for whose maintenance the authority is liable may legally be sent and for the reception of the lunatic therein, and such institution shall be named in the order, and the manager of the hospital or house shall forthwith cause the lunatic to be removed to the institution named in the order. In the case of such removal the original reception order shall remain in force, and shall authorise the classification of the lunatic as a pauper lunatic in the institution to which he is removed.

(2.) “The costs of obtaining an order under this section and of the removal of the lunatic shall be repaid to the manager who obtains the order by the authority liable for the maintenance of the lunatic, and any justice having jurisdiction in the place where the hospital or house from which the lunatic was removed is situate shall have power to fix the amount of such costs and to order such authority to repay the same. The provisions of section three hundred and fourteen of the principal Act shall apply to every such order for the repayment of costs.”]

PART IX

COUNTY AND BOROUGH ASYLUMS

Obligation to provide Asylums

Local authorities to
provide
asylums.

238.—(1.) Every local authority, as defined by this Act, shall provide and maintain an asylum or asylums for the accommodation of pauper lunatics.

(2.) Where the asylum accommodation of a local authority appears to the local authority to be insufficient, the local authority may supply the deficiency by exercising the powers by this Act conferred for providing asylum accommodation, or by rebuilding or enlarging any existing asylum.

(3.) For the purpose of providing asylum accommodation, a local authority may purchase any licensed or other houses and land.

(4.) For the purpose of providing asylum accommodation a local authority not being a county council shall have the same powers as are by section sixty-five of the Local Government Act, 1888, conferred upon a county council.

239. A local authority shall exercise the powers conferred by this Act for providing asylum accommodation by a visiting committee, subject, if the local authority thinks fit, to their directions as to which of the methods of providing asylum accommodation authorised by this Act shall be adopted.

Powers to be exercised by a visiting committee.

Local Authority defined

240. The council of every administrative county and county borough respectively constituted under the Local Government Act, 1888, and the council of each of the boroughs specified in the Fourth Schedule, or in the case of the City of London the common council, shall be a local authority for the purposes of this Act.

Local authority defined.

Powers for providing Asylums

241. A local authority may provide asylum accommodation for pauper and private patients, together or in separate asylums, and may provide separate asylums for idiots or patients suffering from any particular class of mental disorder.

Power to provide asylums for pauper and private patients.

242.—(1.) For the purpose of providing asylum accommodation, a local authority may do all or any of the following things:

Modes in which asylum may be provided.

(a.) Provide and maintain an asylum alone;

(b.) Agree to unite in providing and maintaining a district asylum with any other local authority or local authorities;

(c.) Agree to unite with any other local authority or local authorities upon such terms as to payment and otherwise as may be thought proper for the joint use as a district asylum of any existing asylum, and, if they think fit, for the enlargement of the same.

(2.) Where an agreement to unite has been entered into, an agreement for further union may be entered into between all or any of the local authorities concerned, and for all the purposes of this Act an agreement for further union shall be deemed to be an agreement to unite.

(3.) An agreement to unite shall not be carried into effect without the approval of a Secretary of State.

243.—(1.) The council of a county borough may contract with the visiting committee of an asylum for the reception of the pauper lunatics of the borough into the asylum.

Contract between council of county borough and visiting committee.

(2.) Any such contract may be made for such consideration and upon such terms as to duration, determination, and otherwise as may be agreed between the council of the borough and the visiting committee of the asylum.

(3.) While a contract under this section is in force, making adequate provision for the pauper lunatics of the borough, the council of the borough shall not be required to provide an asylum alone or in union.

(4.) A contract under this section shall not be carried into effect until approved by a Secretary of State.

244.—(1.) Where a county borough has contributed to the cost of building and furnishing a county asylum, the existing liability of the borough council shall continue until a new arrangement is made under this section, and the county council shall provide accommodation for and maintain pauper lunatics sent from the borough on the same terms as hitherto.

Provision for case where a county borough has contributed to the cost of a county asylum.

(2.) Any new arrangement may be made between the county council and

all the borough councils concerned with respect to any such asylum; and if any such new arrangement is made, the borough and county councils may carry into effect any adjustment of property, debts, and liabilities which is the subject of such arrangement. If any council desires to make a new arrangement, and any or all of the other councils refuse to agree to the same, the matter shall be referred to the Commissioners under the Local Government Act, 1888, or, after they have ceased to hold office, to arbitration under that Act.

51 & 52 Vict.,
c. 41.

Borough
contributing
to county
asylum
exempt.

245.—(1.) Where any borough specified in the Fourth Schedule contributes to a county asylum, such borough shall, so long as it continues to contribute, be deemed to satisfy the requirements of this Act with respect to asylum accommodation.

(2.) The Council of the borough may resolve for the purpose of providing asylum accommodation to separate from the county to which it contributes.

(3.) Notice of the resolution to separate shall be given to the clerk of the county council, and upon the expiration of six months from the date of the notice the council of the borough shall be subject to the obligations imposed by this Act of providing asylum accommodation.

(4.) Notwithstanding a notice to separate, the council of the borough shall continue liable to contribute to the county asylum until all the pauper lunatics therein belonging to the borough have been removed.

Where
borough
contracts
with county
powers of
borough to
provide an
asylum to
cease on de-
termination
of contract.
Boroughs
annexed to
counties
under s. 246
to con-
tribute to
expense of
asylum.

246. Where any borough specified in the Fourth Schedule has contracted for the reception of the lunatics of the borough in the asylum of the county in which the borough is situate, the borough shall, on the determination of the contract, cease to be a local authority under this Act, and shall be liable to contribute to the county rate of the county in respect of such lunatic asylum in like manner as the rest of the county.

["L. A., 1891, s. 13.—(1.) Where under section two hundred and forty-six of the principal Act a borough ceases to be a local authority under that Act, the borough shall for all purposes of that Act be annexed to and treated as part of the county in which the borough is situate, and if or so far as the borough has not contributed towards the expense of providing the asylum of the county, a sum to be paid by the borough towards the expenses already incurred in providing the asylum shall be fixed by agreement between the councils of the county and borough, or in default of agreement by an arbitrator appointed by the parties, or, if the parties cannot agree upon an arbitrator, by an arbitrator appointed by the Local Government Board. In fixing the sum to be paid by the borough, the borough shall be credited with any sums already contributed by the borough for lunacy purposes in excess of its legal liability; and the arbitrator shall take into consideration the amounts that may have been paid by the borough for the reception or maintenance, in the asylum of the county, of the lunatics of the borough.

51 & 52 Vict.,
c. 41.

"(2.) Where a borough had before the passing of this Act, by virtue of section eighty-six of the Local Government Act, 1888, and the determination of any contract, become liable to contribute to the county rate of the county in respect of a lunatic asylum, this section shall apply to such borough as if it had immediately after the passing of this Act ceased under section two hundred and forty-six of the principal Act to be a local authority."]

["L. A., 1891, s. 14. Any question relating to lunatic asylums or the maintenance of lunatics arising between any local authorities under the principal

Power to
refer ques-
tions as to

Act and any boroughs not being local authorities under that Act, and any visiting committees or any two or more of such parties respectively, may be referred to an arbitrator appointed by the parties, or, if the parties cannot agree upon an arbitrator, by the Local Government Board.] asylums to the court or to arbitration.

[“L. A., 1891, s. 15. The provisions of sub-sections five, six, and seven of section sixty-two of the Local Government Act, 1888, shall apply to every sum by virtue of this Act agreed to be paid or awarded by an arbitrator as if such sum had been agreed to be paid or awarded under section sixty-two of the Local Government Act, 1888.”] S. 62 of 51 & 52 Vict., c. 41, applied.

Power of Secretary of State to enforce Act

247. If the Commissioners report to a Secretary of State that any local authority has failed to satisfy the requirements of this Act as regards asylum accommodation, the Secretary of State may require the local authority to provide such accommodation in such manner as he may direct, and the local authority shall forthwith carry the requisition into effect. Default by county or borough in providing asylum.

Agreements to Unite

248.—(1.) Agreements to unite shall state—

- (a.) The number of visitors to be chosen by each contracting party ;
 - (b.) The proportion in which the expenses of providing the asylum are to be borne by each contracting party, and the basis upon which such proportion is fixed ;
 - (c.) Where the agreement provides for the joint user of an existing asylum, the sum to be paid by each contracting party towards expenses already incurred.
- Provisions to be contained in agreements to unite.
Form 21.

(2.) Provisions in any agreement to unite, subjecting the visiting committee to any control not provided for by this Act, except the control of the Secretary of State, shall be of no effect.

249. The proportion in which the expenses of providing a district asylum are to be borne, as between the uniting counties and boroughs, may be fixed either according to the extent of the accommodation required for each county and borough, or in proportion to the respective population of each county or borough according to the last census for the time being. Apportionment of expenses.

250. An agreement to unite may with the consent in writing of a majority of the visitors of each contracting local authority and with the sanction of the Secretary of State be altered or varied, but not so as to contain any provision which might not have been contained in an agreement to unite in the first instance. Power to vary agreement to unite.

251.—(1.) Every agreement to unite shall as soon as possible be reported to the local authorities interested. Agreement to unite to be reported and delivered to clerk of local authority.

(2.) The original of every agreement to unite, and of every agreement varying an agreement to unite, shall be delivered to the clerk of the local authority within whose administrative area the asylum to which the same relates is situate or is intended to be situate, and shall be kept by him among the records of the local authority.

(3.) The original agreement so delivered may be inspected without payment by any Commissioner and by any member of the council of any of the contracting local authorities.

(4.) The clerk of a local authority to whom any such agreement is delivered shall cause copies to be made thereof, and shall within twenty days after delivery to him of the original send one copy to the Commissioners and another copy to each of the contracting local authorities.

Application
of money
paid for
expenses
already
incurred.

252. Where under an agreement to unite a sum is to be paid towards the expenses already incurred by a local authority in relation to an existing asylum, the sum shall be paid to the treasurer of the local authority as part of the county or borough fund, and shall be applied to purposes for which capital is properly applicable.

Visitors to
be chosen.

253. When an agreement to unite has been reported, each local authority shall elect out of their body the number of visitors agreed to be chosen by them, and the visitors so chosen shall carry the agreement into effect and shall be the visiting committee of the asylum until the election of a visiting committee in their place.

Purchase of Land and other incidental Powers

Powers of
committee
to provide
asylum.

254.—(1.) A visiting committee authorised to provide asylum accommodation may agree upon plans and estimates, and contract for the purchase of lands and buildings with or without fittings and furniture, and for the erection, restoration, enlargement, and furnishing of buildings, and for the supply of clothing, and for all the matters necessary for carrying into effect the authority conferred upon them.

(2.) Plans and contracts [“for the purchase of lands and buildings and for the erection, restoration, and enlargement of buildings (L. A., 1891, s. 16)”] agreed upon by a visiting committee shall not be carried into effect until approved by a Secretary of State.

(3.) A visiting committee shall report to the local authority or local authorities by whom they were elected, all plans, estimates, and contracts agreed upon, and also the amount to be paid by each local authority, and such plans, estimates, and contracts shall be subject to the approval of the local authority, to whom they are to be reported, except where the amount to be expended does not exceed an amount previously fixed by the local authority.

(4.) In the event of a difference between any local authorities as to whether any plan, estimate, or contract ought to be approved, the local authority withholding approval shall, within four months after the plan, estimate, or contract has been reported to them, send to a Secretary of State a statement in writing of their objections, and the Secretary of State may direct the plan, estimate, or contract to be carried into execution, with or without any alterations, or he may direct such other plan, estimate, or contract, as he thinks fit, to be carried into execution, and the decision of a Secretary of State under this section shall be final.

Additions to
asylums for
private
patients.

255. The visiting committee of an asylum, with the consent of each local authority by whom the asylum is provided, and with the approval in writing of a Secretary of State, may make such alterations in or additions to the asylum either by way of detached buildings or blocks of buildings or otherwise as they think fit for the purpose of providing accommodation for private lunatics.

Contracts.

256.—(1.) Every person entering into a contract with a visiting committee shall give sufficient security for due performance of the contract.

(2.) Every such contract and all orders relating thereto shall be entered in a book to be kept by the clerk of the visiting committee, and when the contract is completed the book shall be deposited and kept among the records of the local authority, or when more than one local authority is interested, then among the records of the local authority which contributes the largest proportion of the expenses of the contract.

(3.) Every such book may be inspected at all reasonable times by any person contributing to the rates of the local authority interested in the contract.

(4.) A copy of every such book shall be kept at the asylum to which the contract relates.

257. A district asylum shall not be enlarged or improved without the consent of all the parties to the agreement under which the same is provided. Enlargement of district asylum.

258.—(1.) The visiting committee of an asylum, with the consent of the local authority by whom they are appointed and of a Secretary of State, may provide for the burial of lunatics dying in the asylum, and of the officers and servants belonging thereto— Burial grounds.

(a.) By appropriating any land already belonging to them or acquiring any land, not exceeding in either case two acres, for enlarging an existing burial ground, or for providing a new burial ground ;

(b.) By agreeing with any corporation or persons or body of persons willing to provide for the burial of such lunatics and other persons as aforesaid.

(2.) The committee may procure the consecration of a new or enlarged burial ground, and in the case of a new burial ground may provide for the appointment of a chaplain therein.

(3.) The incumbent of the parish in which a new or enlarged burial ground provided by a visiting committee is situate shall not be entitled to any fee for the interment of any person buried therein by direction of the committee.

259. Where a visiting committee undertakes the burial of any pauper lunatic, and the public burial ground of the parish where the death took place is closed or inconveniently crowded, the burial may take place in a public burial ground of some other parish, with the consent of the minister and churchwardens of that parish ; and in that case the visiting committee shall pay to the person entitled thereto the burial fees payable under any Act or according to the custom of the place of burial. Burial of lunatics.

260. For the purpose of the purchase of lands by visiting committees the Lands Clauses Acts are hereby incorporated with this Act, except the provisions relating to the purchase of land otherwise than by agreement, the sale of superfluous lands, the recovery of forfeitures, penalties, and costs and access to the special Act, and the expression “ promoters of the undertaking ” wherever used in the Lands Clauses Acts shall mean a visiting committee, and the expression “ special Act ” shall mean this Act. Incorporation of Lands Clauses Acts.

261.—(1.) A visiting committee, instead of purchasing any land or buildings which they are authorised to purchase, may take a lease thereof for any term not less than sixty years at such rent and subject to such covenants as the committee think fit. Power to take land on lease.

(2.) A visiting committee, with the sanction of each local authority for whom they are authorised to act, may hire or take on lease from year to year, or for any term of years, at such rent and subject to such covenants as they

think fit, any land or buildings for the employment of the patients in the asylum, or for the temporary accommodation of any pauper lunatics for whom the accommodation in the asylum is inadequate.

(3.) Lands and buildings hired or taken on lease under this section shall be deemed part of the asylum, and be subject to all existing provisions as to the asylum.

Situation of
asylum.

262. The asylum to be provided by any local authority either solely or jointly, may be situate without the limits of the administrative area of the local authority, and if the asylum or any part thereof is so situate, the council and justices of the county, county borough, or borough to which the asylum wholly or in part belongs shall have full power and authority to act in the county or borough in which the asylum is situate, so far as concerns the regulation of the asylum and the powers conferred by this Act, as if the asylum were situate within the proper jurisdiction of such council and justices.

Rating of
asylums.

263. Lands and buildings already or to be hereafter purchased or acquired for the purposes of any asylum, and any additional building erected or to be erected thereon, shall, while used for those purposes, be assessed to county, parochial, district and other rates made after the commencement of this Act on the same basis and to the same extent as other lands and buildings in the same parish, township, or district.

How lands to
be conveyed.

264. Any lands acquired for the purposes of this Act may be conveyed to the local authority being a county council, or in cases where the local authority is the council of a borough to the municipal corporation of the borough, or, where more than one local authority is interested, to the local authorities interested as joint tenants.

Power to
retain land
unsuitable or
not required
for asylum
purposes.

265. Any lands or buildings which have been used for the purposes of an asylum, and have been found unsuitable, or are otherwise not required for such purposes, may, with the consent of a Secretary of State, and subject to such conditions as he thinks fit to impose, be retained by the local authority, and appropriated for any purposes for which the local authority is empowered to acquire land.

Repairs,
alterations,
improvements.

266.—(1.) The visiting committee of an asylum may, of their own authority, order all necessary and ordinary repairs. They may also, of their own authority, order all necessary and proper additions, alterations, and improvements which the asylum may require, to an amount not exceeding four hundred pounds in any one year.

(2.) An order for repairs, additions, alterations, or improvements to an amount exceeding one hundred pounds shall not be given unless the order is approved and signed by at least three visitors at a meeting of the visiting committee duly summoned upon notice that the proposed expenditure is to be considered thereat.

(3.) Any expenditure incurred, except for repairs, shall be reported by the visiting committee to the local authority on whose behalf the expenditure was incurred.

(4.) In the case of a district asylum, the visiting committee shall apportion expenses incurred under this section in the proportion in which each local authority has contributed to the erection of the asylum, or where any other proportion is fixed by an agreement to unite then in the proportion so fixed; and where any such agreement only provides in what proportion the

expense of repairs shall be borne, the expense of additions, alterations, and improvements shall be borne in the same proportion.

(5.) The visiting committee shall make an order for payment of the expenses incurred under this section upon the treasurer of the local authority, or, in the case of a district asylum, shall make an order upon the treasurer of each local authority concerned for payment of the expenses apportioned to that local authority, and the treasurer upon whom the order is made shall pay the amount mentioned in the order out of the county or borough fund.

Dissolution of Agreement to unite

267.—(1.) A visiting committee, with the consent of a Secretary of State, may by a resolution passed by a majority of the whole number of the members of the committee at a meeting summoned upon notice that the resolution is to be proposed thereat dissolve an agreement to unite. Power to dissolve a union.

(2.) Every local authority interested under an agreement to unite shall, before a dissolution of the agreement takes effect, elect a committee to provide asylum accommodation in accordance with the provisions of this Act.

(3.) In case an agreement to unite is dissolved between any local authority not having an asylum and a local authority which has an asylum and is in receipt of an annual fixed payment as remuneration for any expenses incurred for the benefit of the local authority making the payment, such last-mentioned local authority may raise such a sum of money for compensation to the local authority receiving the payment as may be agreed upon and approved by the visiting committee by whom the union is dissolved.

(4.) Upon the dissolution of an agreement to unite the visiting committee may divide the real and personal property held for the purposes of the agreement among the several local authorities, between whom the agreement existed, in the proportion in which they contributed thereto or are interested therein, or in such proportions as the visiting committee, with the consent of a Secretary of State, think fit. And a sum of money of such amount, and to be raised by any of the local authorities parties to the agreement in such proportions as the committee, with the consent of a Secretary of State, approve, may be awarded to any local authority instead of a share or part of a share in such property.

(5.) Any money to be raised under this section may be raised in the same manner and by the same means as other money appointed to be raised for the purposes of this Part of this Act.

Cancellation of Contracts

268.—(1.) Where any lands contracted to be purchased or taken in exchange by a visiting committee are found unsuitable, or are not required, the committee, or any committee appointed in their place, may, with the consent of a Secretary of State, and upon payment of such sum, if any, as a Secretary of State approves, procure a release from the contract and execute a release to the other contracting party. Power to cancel contract.

(2.) The consideration, if any, for such release, and all expenses in relation to the contract and release, shall be raised in the same manner as if the same

were payable in respect of the purchase-money of lands for the purposes aforesaid.

Admission of Pauper Lunatics from other Counties or Boroughs

Power to contract for reception of lunatics.

269.—(1.) A visiting committee (in this section called the contracting committee) may contract with the manager of a licensed house, or subject as in this section provided with any other visiting committee (in this section called the receiving committee), for the reception into that house, or into the asylum of the receiving committee, of all or any of the pauper lunatics of the local authority for which the contracting committee is acting, or for the use and occupation of the whole or any part of the house, upon such terms as may be agreed.

(2.) Where a contract between a visiting committee and the subscribers to a hospital for the reception of pauper patients into the hospital was subsisting on the twenty-sixth of August One thousand eight hundred and eighty-nine, such contract shall continue in force, and on its expiration a new contract may be entered into with such subscribers subject to the provisions of this section.

Contracts by town councils and the subscribers to a hospital.

[“L. A., 1891, s. 17. Where a contract between the council of a borough and the subscribers to a hospital for the reception of pauper lunatics into the hospital was subsisting on the twenty-sixth day of August One thousand eight hundred and eighty-nine, such contract, unless determined by the parties or one of them, shall be deemed to have continued in force since that date, and may be renewed subject to the same conditions and with the same consequences as if the contract had been entered into by a visiting committee on behalf of the borough.”]

(3.) A contract between a visiting committee and any other visiting committee or the manager of a licensed house or the subscribers to a hospital for the reception of the lunatics of the local authority for which the contracting committee is acting (hereinafter called a reception contract) shall not be made for more than five years, but such contract may be renewed subject to the provisions of this section.

(4.) Where a reception contract has been made, whether before or after the passing of this Act, on behalf of a borough with the visiting committee of an asylum, and the contract is determinable by the parties thereto, or either of them, the contract shall not be determined without the consent of a Secretary of State.

(5.) A reception contract shall not be carried into effect until approved by a Secretary of State, and any reception contract may be determined by a Secretary of State.

(6.) A reception contract with the manager of a licensed house shall determine if the house ceases to be licensed.

(7.) A reception contract shall not exempt the local authority for which the contracting committee is acting from the requirements of this Act as regards asylum accommodation if a Secretary of State determines the contract although the term for which the contract was entered into has not expired.

(8.) Except as in this section provided a visiting committee shall not after

the commencement of this Act enter into a reception contract with subscribers to a hospital.

(9.) Where a reception contract has been made by a visiting committee, the local authority for whom the visiting committee acts shall, while the contract subsists, defray out of the county or borough fund so much of the weekly charge agreed upon for each pauper lunatic as in the opinion of the visiting committee represents the sum due for the accommodation, not exceeding one fourth of the entire weekly charge, in exoneration to that extent of the union to which the maintenance of any such pauper lunatic is chargeable.

(10.) Where a reception contract has been entered into by the visiting committee of an asylum with the subscribers to a hospital or the manager of a licensed house, the hospital or house may be visited by any members for the time being of the committee of the asylum.

270.—(1) Where it appears to the visiting committee of an asylum that the asylum is more than sufficient for the pauper lunatics who for the time being can be lawfully received, the committee may by resolution permit any other pauper lunatics to be received into the asylum.

Cases where asylum is more than sufficient for pauper lunatics.

(2) A resolution under this section may require that no pauper lunatic be admitted thereunder without an undertaking by the minute of the guardians of the union to which the lunatic is chargeable for the payment of the expenses of maintenance of the lunatic, and of his burial if he dies in the asylum, as well as for his removal within six days after notice from the manager of the asylum.

(3.) A resolution under this section may be rescinded or varied.

Admission of Private Patients

271.—(1.) Private patients may be received into any asylum upon such terms as to payment and accommodation as the visiting committee think fit. All enactments as to the conditions on which such lunatics may be received into hospitals or licensed houses shall be applicable to private patients received into such asylums.

Provisions as to private patients in asylums.

(2.) An account of the amount, by which the sums charged for private patients received in the asylum exceed the weekly charges for pauper lunatics sent from or settled in any place, parish, or borough which has contributed to provide the asylum, shall be made up to the last day of each year, and the surplus, if any, after carrying to the building and repair funds such sums, and providing for such outgoings and expenses as the visiting committee consider proper, shall be paid to the treasurer of the local authority to which the asylum belongs, or in the case of an asylum belonging to several local authorities, to their respective treasurers in the proportions in which such local authorities or the justices of the counties and boroughs whose powers have been transferred to them have contributed to the asylum, and shall be applied as part of the county or borough fund.

Approval of Secretary of State

272. For the purpose of procuring the approval of a Secretary of State to any agreement, contract, or plan requiring approval under this Act, the agreement, contract, or plan, with an estimate of the probable cost of carry-

Mode of obtaining approval of Secretary of State.

ing it into effect, shall be submitted to the Commissioners, and to the Secretary of State, and the Commissioners shall make such inquiries as they think fit, and shall report thereon to the Secretary of State, who may approve the agreement, contract, or plan, with or without modification, or may refuse his approval.

Provisions for raising Expenses

273. The expenses to be paid and contributed by a local authority for the purposes of this Act shall be paid by the treasurer of the local authority out of the county or borough fund as the case may be to the treasurer of the asylum to which such local authority either alone or jointly pays or contributes.

Borrowing Powers

Power to
borrow.

51 & 52 Vict.,
c. 41.
45 & 46 Vict.,
c. 50.

274.—(1.) For the purpose of paying any money payable under this Act, or for repaying any moneys borrowed under this Act or any former Act, authorising borrowing for purposes of asylum accommodation, the local authority may with the consent of the Local Government Board, and subject to the provisions of the Local Government Act, 1888, and the Municipal Corporations Act, 1882, according as the same respectively are applicable to the local authority, borrow on the security of the county or borough fund, and of any revenue of the local authority, or on either such fund or revenues or on any part of the revenues, such money as the local authority requires.

(2.) The Public Works Loan Commissioners may, if they see fit, make any loan for the purposes of this Act to the local authority upon the security of any fund or revenues applicable to the purposes of this Act.

Rules and Regulations

General rules
and regula-
tions to be
framed.

275.—(1.) The visiting committee of an asylum shall within twelve months after the completion of the asylum prepare and submit to a Secretary of State general rules for the government of the asylum, and such rules when approved by a Secretary of State shall be printed and observed.

(2.) The general rules of every asylum may be altered and varied with the approval of a Secretary of State.

(3.) The visiting committee shall also make regulations (not inconsistent with the general rules) setting forth the number and description of officers and servants and their respective duties and salaries.

(4.) The regulations may provide that any number of beds in such part of the asylum as the committee think fit shall be reserved for the cases specified in the regulations, and in that case the asylum shall for the purposes of this Act, as respects the admission of cases not within the class for which beds are reserved, be deemed full when there are no vacant beds except those so reserved, but the committee may, if they think fit, fill any reserved beds.

(5.) The regulations may also provide for the exclusion of any persons afflicted with any malady which the visiting committee deem contagious or infectious or coming from a place in which such a malady may be prevalent, and for the absence for a period not exceeding four days of a patient from the asylum by permission of the manager.

(6.) The committee shall also determine the diet of the patients.

Officers of Asylums

276.—(1.) The visiting committee of every asylum shall appoint:—

Officers of
asylums.

- (a.) A chaplain, who shall be in priest's orders, and shall be licensed by the bishop of the diocese;
- (b.) A medical officer, who shall reside in the asylum and shall not be the clerk or treasurer of the asylum;
- (c.) A superintendent of the asylum, or, if there is more than one division, a superintendent of each division of the asylum, who shall be the resident medical officer or one of the resident medical officers of the asylum, or of the division of which he is appointed superintendent, unless a Secretary of State authorise the committee to appoint some other person than a medical officer to be superintendent;
- (d.) A clerk;
- (e.) A treasurer;
- (f.) Such other officers and servants as they think fit.

(2.) The visiting committee may appoint a minister of any religious persuasion to attend patients of the religious persuasion to which the minister belongs.

(3.) The committee may remove any person appointed under this section, and if the office of chaplain, medical officer, superintendent, clerk, or treasurer becomes vacant, the committee shall appoint a person to fill the vacancy subject to the restrictions affecting the original appointment, and they may in their discretion fill any vacancies among other officers and servants of the asylum.

(4.) The committee may also appoint a visiting physician or surgeon to the asylum.

(5.) The salaries, wages, and remuneration of every person appointed under this section shall be fixed by the committee.

277.—(1.) The licence of the chaplain of an asylum shall be revocable by the bishop.

(2.) The chaplain, or his substitute approved by the committee, shall perform in the chapel of the asylum, or in some other convenient place belonging to the asylum, divine service according to the rites of the Church of England on every Sunday, Christmas-day, and Good Friday. He shall also perform divine service, and such other services according to the rites of the Church of England as the committee direct, at such times as they appoint. The chaplain.

(3.) If a patient is of a religious persuasion differing from that of the established Church, a minister of his persuasion, at the request of the patient or his friends, may, with the consent of the medical officer and under such regulations as he approves, visit the patient.

278.—(1.) The clerk of the asylum shall keep all books and documents which the visiting committee are required to keep or direct to be kept. Books and
accounts.

(2.) He shall also keep an account of the receipts and expenditure on account of the asylum.

(3.) Before the thirtieth day of September in each year, or such other date as the Local Government Board appoint, he shall send an abstract of the account for the previous year, ending on the thirty-first day of March, or such other date as the Local Government Board appoint, to the Local Government Board, and to the Commissioners.

(4.) The abstract shall contain such particulars and be in such form as the Local Government Board direct.

(5.) Within one month from the receipt of the abstract a copy thereof shall be laid before both Houses of Parliament, if Parliament is then sitting, and if not, within one month from the commencement of the next session.

(6.) The treasurer and every officer of an asylum who receives or expends money or goods on account of the asylum shall keep accounts of his receipts and expenditure.

(7.) This section shall not affect any order made by the Local Government Board before the commencement of this Act.

Accounts of
county
asylums.

[“L. A., 1891, s. 18. The provisions of the Local Government Act, 1888, relating to the accounts of county councils and their officers, and to the audit of such accounts, shall apply to the accounts of every asylum belonging wholly or in part to a county council and of the visiting committee and officers thereof.”]

Pensions

Pensions to
officers.

280.—(1.) The visiting committee may grant to any superintendent, chaplain, matron, or other officer or servant of the asylum, who is incapacitated by confirmed illness, age or infirmity, or who has been an officer or servant in the asylum for not less than fifteen years and is not less than fifty years old, such superannuation allowance as the committee think fit.

(2.) Where the offices of superintendent and matron are held by man and wife, and a superannuation allowance has been granted to the superintendent, the committee may, if the matron has been an officer of the asylum for not less than twenty years, grant her such superannuation allowance as they think fit, although she is not incapacitated by illness, age, or infirmity: Provided that, if any such matron is appointed to a public office or to any office under this Act in respect of which she receives a salary, her superannuation allowance shall, so long as she receives such salary, be suspended or diminished by the amount of the salary according as the salary is or is not greater than the allowance.

(3.) A superannuation allowance shall not exceed two-thirds of the salary paid to the superannuated person at the date of superannuation and such further sum (if any) as the visitors think fit to grant, having regard to the value of the lodgings, rations, and other allowances enjoyed by the superannuated person.

Mode in
which pen-
sion to be
granted.

281.—(1.) A superannuation allowance shall not be granted unless seven clear days' notice of the meeting at which the same is to be granted, and of the intention to determine thereat the question of such grant, has been given, nor unless three visitors concur in and sign the order granting the same.

(2.) A superannuation allowance granted under this Act shall be paid out of the county or borough fund as the case may be.

(3.) A superannuation allowance payable out of the county fund shall not be paid until the grant thereof has been confirmed by the county council.

Service in
several asy-
lums of the
same local
authority.

282. When any officer is transferred from one asylum to another, wholly or in part belonging to the same local authority, his service in all such asylums shall be counted for the purpose of computing his pension, superannuation allowance, or gratuity for length of service, as if all such asylums had constituted only one asylum.

PART X

EXPENSES OF PAUPER LUNATICS

Weekly Expenses

283.—(1.) Every visiting committee shall fix a weekly sum, not exceeding ^{Weekly sum} fourteen shillings, for the expenses of maintenance and other expenses of ^{to be fixed.} each pauper lunatic in the asylum, and of such amount that the total of such weekly sums shall be sufficient to defray such expenses and also the salaries of the officers and attendants of the asylum, and such weekly sum may from time to time be altered.

(2.) If fourteen shillings a week is found insufficient for the purposes aforesaid, the local authority to whom the asylum belongs, may by order direct such addition to be made to the weekly sum as to the local authority seems necessary, and every such order shall be signed by the clerk of the local authority, and forthwith published in a local newspaper.

(3.) A committee may fix a greater weekly sum, not exceeding fourteen shillings, to be charged in respect of pauper lunatics other than those sent from or settled in a parish or place within the county or borough to which the asylum belongs.

(4.) Any excess created by the payment of such greater weekly sum may, if the visiting committee think fit, be paid over to a building and repair fund, to be applied by the committee to the altering, repairing, or improving the asylum, and the committee shall annually submit to the local authority a detailed statement of the manner in which such fund has been expended.

284. Where there is more than one asylum under the management and control of a visiting committee, the committee may, subject to any direction given by the local authority, provide that a uniform charge shall be made for the maintenance of lunatics in the several asylums, and that for that purpose any surplus arising on the accounts of one asylum shall be applied to meet the deficit arising on the accounts of another asylum. ^{Uniform charge where more than one asylum.}

Medical Fees and other Expenses

285.—(1.) Whenever a justice directs a lunatic or alleged lunatic, whether a pauper or not, to be examined by a medical practitioner under the provisions of this Act, the justice directing the examination, or any other justice having jurisdiction in the place where the examination took place, may make an order upon the guardians of the union named in the order for payment of such reasonable remuneration to the medical practitioner and of all such other reasonable expenses in and about the examination and the inquiry, whether an order for the reception of the alleged lunatic in an institution for lunatics or workhouse ought to be made, and also if an order is made for payment of such reasonable expenses of carrying the order into effect as the justice thinks proper. ^{Payment of medical fees and other expenses.}

(2.) The guardians upon whom an order is made under this section may recover any sums paid thereunder against the lunatic or alleged lunatic and his estate, and the person or authority legally liable for his maintenance as in the case of orders for maintenance under this Act.

Liability for Expenses of Maintenance

Charge-
ability of
pauper
lunatic.

286.—(1.) Where a pauper lunatic is sent to an institution for lunatics, or where a lunatic in an institution for lunatics becomes a pauper, he shall be deemed to be chargeable to the union from which he was sent, until it has been established, as by this Act provided, that the lunatic is settled in some other union, or that it cannot be ascertained in what union the lunatic was settled, and the manager of the institution shall forthwith give to the authority liable for his maintenance notice that the lunatic has become destitute.

(2.) Every pauper lunatic who is chargeable to a union shall, while he resides in an institution for lunatics, be deemed for the purposes of his settlement to be resident in the union to which he is chargeable.

Orders for
maintenance
of lunatics.

287.—(1.) The justice by whom any pauper lunatic is sent to any institution for lunatics under this Act, or any two justices of the county or borough in which the institution for lunatics where any pauper lunatic is confined is situate, or from any part of which any pauper lunatic has been sent, or any two justices, being visitors of such institution, may make an order upon the guardians of the union to which the lunatic is chargeable, for payment to the treasurer, or manager of the institution, of the reasonable charges of the lodging, maintenance, medicine, clothing, and care (in this Act referred to as the expenses of maintenance) of such lunatic.

(2.) Any such order may be retrospective or prospective, or partly retrospective and partly prospective.

(3.) An order under this section shall not be subject to appeal.

Inquiry into
settlement.

288. Any two justices for the county or borough in which an institution for lunatics where a pauper lunatic is or has been confined is situate, or to which such institution being an asylum wholly or in part belongs, or from any part of which any pauper lunatic is or has been sent for confinement, may, at any time, inquire into the settlement of the pauper lunatic.

Adjudication
as to settle-
ment.

289. If satisfactory evidence can be obtained as to such settlement in any union, such justices shall, by order, adjudge the settlement, and order the guardians of the union to pay to the guardians of any other union the expenses incurred in or about the examination of the lunatic and the bringing him before a justice or justices, and his removal and conveyance to or from any institution for lunatics (in this Act referred to as the incidental expenses), and all moneys paid by such last-mentioned guardians to the treasurer or manager of the institution for the expenses of maintenance of the lunatic, and incurred within twelve months previous to the date of such order, and, if the lunatic is still in confinement, also to pay to the treasurer or manager of the institution the reasonable expenses of the future maintenance of such lunatic.

If settlement
cannot be
ascertained
a pauper
lunatic may
be made
chargeable to
a borough or
county.

290.—(1.) If a pauper lunatic is not settled in the union from which he was sent to an institution for lunatics, and his settlement cannot be ascertained, and the lunatic was sent from a quarter sessions borough which is free from contributing to the payment of the expenses of pauper lunatics chargeable to the county in which the borough is situate, or from a place not in such a borough, then the relieving officer of the union shall give to the clerk of the local authority within whose area the lunatic is found, ten days' notice

to appear before two justices having jurisdiction within such area, at a time and place to be appointed in the notice.

(2.) Upon the appearance of the clerk of the local authority, in person or by deputy, or in case of non-appearance upon proof of due service of the notice, any two or more such justices may inquire into the circumstances of the case, and adjudge the pauper lunatic to be chargeable to the local authority, and may order the treasurer of the local authority to pay to the guardians of any union the incidental expenses of the lunatic, and all moneys paid by such guardians to the treasurer or manager of the institution for lunatics for the expenses of maintenance of the lunatic, and incurred within twelve months previous to the date of the order, and if the lunatic is still in confinement, to pay to such treasurer or manager the expenses of the future maintenance of the lunatic.

(3.) Such justices may direct such further inquiries as they think fit to ascertain the union in which any pauper lunatic is settled, and delay their adjudication until after such further inquiries.

(4.) Every local authority to whom a pauper lunatic is adjudged to be chargeable may at any time thereafter inquire as to the union in which the lunatic is settled, and may procure him to be adjudged to be settled in any union.

291. If after a pauper lunatic has been sent to an institution for lunatics, and has been adjudged chargeable to a local authority, the local authority procure the lunatic to be adjudged to be settled in a union, any two justices of the county or borough in which the institution where the lunatic is confined is situate, or from any part of which the lunatic was sent for confinement, or any two justices, being visitors of the institution, may make an order upon the guardians of the union for payment to the treasurer of the local authority of all expenses of maintenance of the lunatic paid by such treasurer to the treasurer or manager of the institution, and incurred within twelve months previous to the order, and, if the lunatic is still in confinement, also for payment to such treasurer or manager of the expenses of the future maintenance of the lunatic.

Provision for reimbursement of expenses of a lunatic afterwards adjudged to be settled in a union.

292.—(1.) Justices by this Act authorised to make orders for payment of expenses upon guardians of unions, may make such orders, although the union is not within the jurisdiction of the justices.

Orders as to lunatic paupers.

(2.) Orders as to the settlement or chargeability of pauper lunatics and for payment of expenses may be obtained by the guardians of any union.

293. An order for payment of the future expenses of maintenance of a lunatic shall extend to the payment of such expenses to the treasurer or manager of any institution for lunatics to which he is removed or in which he is for the time being confined.

Order for maintenance to extend to any place where the lunatic is.

294. All incidental expenses and expenses of maintenance of a lunatic removed to an institution for lunatics who would at the time of his removal have been exempt from removal to the parish of his settlement or the country of his birth by reason of some provision of the Poor Removal Act, 1846, as amended by subsequent Acts, shall be paid by the guardians of the union wherein the lunatic has acquired such exemption, and no order shall be made in respect of such lunatic under any provision contained in this or any other Act upon the guardians of the union in which the lunatic is settled while the above-mentioned expenses are to be paid and charged as herein provided.

The costs of pauper lunatics who are irremovable. 9 & 10 Vict. c. 66.

Charges may be paid without orders of justices. 295. The guardians upon whom an order might be made under this Act for the payment of any money may pay the same without an order, and may charge the same to such account as they could have done if an order had been made.

The liability of relations of pauper not to be affected. 296. The liability of any relation or person to maintain any lunatic shall not be taken away or affected, where such lunatic is sent to or confined in any institution for lunatics, by any provision herein contained concerning the maintenance of such lunatic.

Expenses of removal, discharge, and burial. 297. The necessary expenses attending the removal, discharge, or burial of a pauper lunatic in any institution for lunatics, shall be borne by the union to which the lunatic is chargeable, or the local authority liable for his maintenance, and shall be paid by the guardians of the union or by the treasurer of the local authority.

Provisions of Act as to expenses to extend to pauper lunatics sent to asylums under any other Act. 298. The provisions of this Act for the payment of expenses in relation to pauper lunatics shall be applicable with respect to persons confined as pauper lunatics sent to any institution for lunatics under any other Act authorising their reception therein as pauper lunatics, and (save as herein otherwise provided concerning any lunatic who shall appear to have any real or personal property applicable to his maintenance) with respect to all other lunatics sent to any institution for lunatics under any order of a justice or justices made before the commencement of this Act, or under a summary reception order made by a justice under this Act, or under an order made by two or more commissioners before or after the commencement of this Act, as if such last-mentioned lunatics were at the time of being so sent actually chargeable to the union from which they are sent.

Payment of expenses as to lunatics becoming paupers. " [L. A., 1891, sec. 22. The provisions of the principal Act for the payment of expenses in relation to pauper lunatics shall be applicable with respect to lunatics in institutions for lunatics who become paupers.] "

Application of Lunatic's Property

Power to recover expenses against lunatic's estate. 299.—(1.) If it appears to any justice that a lunatic, chargeable to any union, or local authority, has any real or personal property more than sufficient to maintain his family, if any, such justice may by order direct a relieving officer of the union, or the treasurer or some other officer of the local authority, to seize so much of any money, and to seize and sell so much of any other personal property of the lunatic, and to receive so much of the rents of any land of the lunatic as the justice may think sufficient to pay the expenses of maintenance and incidental expenses respectively incurred or to be incurred in relation to the lunatic.

(2.) If any trustee, or the Bank, or any other society or person having possession of any property of a lunatic, shall pay or deliver to a relieving officer of a union, or to the treasurer or other officer of the local authority to which respectively a lunatic is chargeable, any money or other property of the lunatic, to repay the charges in this section mentioned, whether pursuant to an order under this section, or without an order, the receipt of such relieving officer, treasurer, or officer shall be a good discharge.

Order by county court judge. 300. An order may be made by a judge of county courts upon an application by the guardians of any union for payment of the expenses incurred by them under this Act in relation to a lunatic, and such order may be enforced

against any property of the lunatic in the same way as a judgment of the county court.

Appeals

301.—(1.) Any person aggrieved by the refusal of an order by any justice or justices as to any matter within the jurisdiction of a justice or justices under this part of this Act, may appeal to a court of quarter sessions upon giving to the justice or justices against whom the appeal is made fourteen clear days' notice of appeal. Persons^a aggrieved by refusal of an order may appeal to the sessions.

(2.) The determination of the court upon the appeal shall be final.

302. The guardians of any union, and the clerk of a local authority, obtaining any order under this Act adjudging the settlement of any lunatic to be in any union, shall, within a reasonable time after the date of the order, send or deliver, by post or otherwise, to the guardians of the union in which the lunatic is adjudged to be settled, a copy of the order, and also a statement in writing under the hand of the clerk to the guardians, or under the hand of the clerk of the local authority, as the case may be, stating the description and address of the guardians or clerk obtaining the order, and the place of confinement of the lunatic, and setting forth the grounds of the adjudication, including the particulars of any settlement relied upon in support thereof; and on the hearing of any appeal against the order the respondents shall not give evidence of any other grounds in support of the order than those set forth in such statement. Party obtaining order of adjudication to send copy thereof and statement of grounds.

303. If the guardians of any union feel aggrieved by any order adjudging the settlement of a lunatic, they may appeal to the quarter sessions for the county or borough on behalf of which the order has been obtained, or in which the union obtaining the order is situate, or in case such union extends into several counties, then to the next quarter sessions for the county or borough in which the institution for lunatics where the lunatic is or has been confined is situate, and such sessions, upon hearing the appeal, shall have full power finally to determine the matter. Appeal against order of adjudication.

304.—(1.) The clerk to the justices making an order adjudging the settlement of a lunatic, or the clerk of the peace in the case hereinafter provided for, shall keep the depositions upon which the order was made, and shall, within seven days after application by any party authorised to appeal against the order, furnish a copy of the depositions to the applicant. Copy of depositions to be furnished on application.

(2.) The person applying for a copy of the depositions shall pay for the same at the rate of twopence for every folio of seventy-two words.

(3.) No omission or delay in furnishing a copy of the depositions shall be a ground of appeal against the order.

(4.) On the trial of any appeal no such order shall be quashed or set aside either wholly or in part on the ground that the depositions do not furnish sufficient evidence to support, or that any matter therein contained or omitted raises an objection to the order or grounds on which the same was made.

(5.) If the justices who make any such order have no clerk, they shall send or deliver the depositions to the clerk of the peace of the county or borough to the quarter sessions whereof the appeal lies, and the party obtaining such order shall, in the statement of the grounds of adjudication, state that the justices have no clerk.

305. No appeal shall be allowed against any such order if notice in No appeal

if notice not given within a certain time.

writing of the appeal is not sent or delivered by post or otherwise to the party on whose application the order was obtained within twenty-one days after the sending or delivery, as hereinbefore directed, of a copy of the order, and such statement as hereinbefore mentioned, unless within the twenty-one days a copy of the depositions has been applied for by the party intending to appeal, in which case a further period of fourteen days after the sending of such copy shall be allowed for giving notice of appeal.

Grounds of appeal to be stated.

306. In every case where notice of appeal against such order is given the appellant shall, with the notice, or fourteen days at least before the first day of the sessions at which the appeal is to be tried, send or deliver by post or otherwise to the respondent a statement in writing under his hand, or where the appellants are the guardians of a union, under the hand of the clerk to the guardians, of the grounds of such appeal; and the appellant shall not, on the hearing of any appeal, give evidence of any other grounds of appeal than those set forth in such statement.

As to the sufficiency of statement of grounds of adjudication or appeal.

307.—(1.) Upon the hearing of any appeal against any such order no objection whatever on account of any defect in the form of setting forth any ground of adjudication or appeal in any such statement shall be allowed, and no objection to the reception of legal evidence offered in support of any such ground alleged to be set forth in any such statement shall prevail, unless the court is of opinion that such alleged ground is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial.

(2.) In all cases where the court is of opinion that any such objection to such statement or to the reception of evidence ought to prevail, the court may, if it thinks fit, cause any such statement to be forthwith amended by some officer of the court, or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions, or to the next subsequent sessions, or both payment of costs and postponement, as to the court appears just.

Power for court to amend order on account of omission or mistake.

308.—(1.) If, upon the trial of any appeal against any such order, or upon the return to a writ of certiorari, any objection is made on account of any omission or mistake in drawing up the order, and it is shown to the satisfaction of the court that sufficient grounds were proved before the justices making the order to authorise the drawing up thereof free from the omission or mistake, the court may, upon such terms as to payment of costs as it thinks fit, amend the order and give judgment as if no omission or mistake had existed.

(2.) No objection on account of any omission or mistake in any such order brought up upon a return to a writ of certiorari shall be allowed, unless the omission or mistake has been specified in the rule for issuing such writ of certiorari.

Power of Court as to costs.

309.—(1.) Upon every such appeal the court before whom the same is brought may, if it thinks fit, order the party against whom the same is decided to pay to the other such costs and charges as may to the court appear just, and shall certify the amount thereof.

(2.) If either of the parties to the appeal have included in the statement of grounds of adjudication or of appeal sent to the opposite party any grounds in support of the order or of appeal which, in the opinion of the court determining the appeal, are frivolous and vexatious, such party shall

be liable, at the discretion of the court, to pay the whole or any part of the costs incurred by the other party in disputing any such grounds.

310. The decision of the court upon the hearing of any appeal against any such order, as well upon the sufficiency and effect of the statement of the grounds in support of the order and appeal, and of the copy or duplicate of the order sent to the appellant, as upon the amending or refusing to amend the order as aforesaid, or the statement of grounds, shall be final, and shall not be liable to be reviewed in any court by means of a writ of certiorari or mandamus or otherwise.

Decision upon appeal to be final.

311.—(1.) In any case in which an order has been made as aforesaid, and a copy thereof sent as herein required, the party who has obtained the order, whether any notice of appeal against the order has been given or not, and whether any appeal has been entered or not, may abandon the order, by notice in writing under the hand of such party, or, where the order has been obtained by the guardians of a union, under the hand of the clerk to the guardians, to be sent by post or delivered to the appellant or the party entitled to appeal, and thereupon the order and all proceedings consequent thereon shall be void, and shall not be given in evidence, in case any other order for the same purposes is obtained.

Abandonment of orders.

(2.) In all cases of such abandonment the party abandoning shall pay to the appellant or the party entitled to appeal the costs which he has incurred by reason of the order and of all subsequent proceedings thereon.

(3.) The proper officer of the court before whom the appeal (if it had not been abandoned) might have been brought shall, upon application, tax and ascertain the costs, at any time, whether the court is sitting or not, upon production to him of the notice of abandonment, and upon proof to him that such reasonable notice of taxation, together with a copy of the bill of costs, has been given to the guardians, or clerk abandoning the order, as the distance between the parties shall in his judgment require; and thereupon the sum allowed for costs, including the usual costs of taxation, which such officer is hereby empowered to charge and receive, shall be endorsed upon the said notice of abandonment, and the said notice so endorsed shall be filed among the records of the said court.

312. In every case of an inquiry, or appeal as to the union in which a pauper lunatic is settled, the guardians, clerks of the guardians, and relieving officers of every union interested in the inquiry or appeal, and every person duly authorised by them respectively, and the clerk of the local authority interested in the inquiry or appeal, and every person duly authorised by him, shall at all reasonable times be allowed free access, in the presence of the medical attendant, to the lunatic to examine him as to the premises.

Guardians and officers interested to have access to the lunatic.

313. The provisions of section thirty-one of the Summary Jurisdiction Act, 1879, shall not apply to appeals under this part of this Act.

Sec. 31 of 42 & 43 Vict., c. 49. not to apply.

Recovery of Expenses

314.—(1.) If the treasurer of any local authority, upon whom any order of justices for the payment of money under the provisions of this Act is made, refuses or neglects for twenty days after due notice of such order to pay the money, the money, together with the expenses of recovering the same, shall be recovered by distress and sale of the goods of the treasurer so refusing or neglecting, by warrant under the hands of any two justices authorised to

Money ordered to be paid may be recovered by distress or action.

make the order for payment of the money, or by an action at law, or by any other proceeding in a court of competent jurisdiction, against the treasurer.

(2.) If the guardians upon whom any such order is made refuse or neglect for such time as aforesaid to pay the money, the same, together with the expenses of recovering the same, may be recovered by an action at law or by any other proceeding in any such court.

(3.) In case of any such action or proceeding no objection shall be taken to any default or want of form in any order for reception or maintenance, or in any certificate or adjudication under this Act, if such order or adjudication has not been appealed against, or if appealed against has been affirmed.

PART XI

PENALTIES, MISDEMEANORS, AND PROCEEDINGS

Lunatics
not to be
detained
except in
accordance
with Act.

315.—(1.) Every person who, except under the provisions of this Act, receives or detains a lunatic, or alleged lunatic, in an institution for lunatics, or for payment takes charge of, receives to board or lodge, or detains a lunatic or alleged lunatic in an unlicensed house, shall be guilty of a misdemeanor, and in the latter case shall also be liable to a penalty not exceeding fifty pounds.

(2.) Except under the provisions of this Act, it shall not be lawful for any person to receive or detain two or more lunatics in any house unless the house is an institution for lunatics or workhouse.

(3.) Any person who receives or detains two or more lunatics in any house, except as aforesaid, shall be guilty of a misdemeanor.

Neglect to
send notices
on admis-
sion a mis-
demeanor.

316. The manager of any hospital or licensed house, and any person having charge of a single patient who omits to send to the Commissioners the prescribed documents and information upon the admission of a patient, or to make the prescribed entries, and give the prescribed notices upon the removal, discharge, or death of a patient, shall be guilty of a misdemeanor, and in the case of a single patient shall also be liable to a penalty not exceeding fifty pounds.

Misstate-
ments.

317.—(1.) Any person who makes a wilful misstatement of any material fact in any petition, statement of particulars, or reception order under this Act, shall be guilty of a misdemeanor.

(2.) Any person who makes a wilful misstatement of any material fact in any medical or other certificate, or in any statement or report of bodily or mental condition under this Act, shall be guilty of a misdemeanor.

(3.) A prosecution for a misdemeanor under this section shall not take place except by order of the Commissioners, or by the direction of the Attorney-General or the Director of Public Prosecutions.

False entries.

318. Any person who in any book, statement, or return, knowingly makes any false entry as to any matter as to which he is by this Act or any rules made under this Act required to make any entry, shall be guilty of a misdemeanor.

319. If the manager of an institution for lunatics, or the person having charge of a single patient, omits to send to the coroner notice of the death of a lunatic within the prescribed time, he shall be guilty of a misdemeanor. Notice to coroner of death.

320. Any person who makes default in sending to the Commissioners or any other person any return, report, extract, copy, statement, notice, plan, or document, or any information within his knowledge or obtainable by him, when required so to do under this Act or any other Act relating to lunacy, or any rules made under this Act or in complying with the said Acts or rules, shall for each day or part of a day during which the default continues be liable to a penalty not exceeding ten pounds, unless a penalty is expressly imposed by this or any other Act for such default: Provided that all or any part of the cumulative penalties may be remitted by the court in any case in which it is made to appear to the satisfaction of the court that the original default or its continuance during any period of time arose from mere accident or oversight, and not from wilful or culpable neglect on the part of the person sued. Penalty for non-compliance with the Act and rules.

321.—(1.) Any person who obstructs any Commissioner or Chancery or other visitor in the exercise of the powers conferred by this or any other Act, shall for each offence be liable to a penalty not exceeding fifty pounds, and shall also be guilty of a misdemeanor. Obstruction.

(2.) Any person who wilfully obstructs any other person authorised under this Act by an order in writing under the hand of the Lord Chancellor or a Secretary of State to visit and examine any lunatic or supposed lunatic, or to inspect or inquire into the state of any institution for lunatics, gaol, or place wherein any lunatic or person represented to be lunatic is confined or alleged to be confined, in the execution of such order, and any person who wilfully obstructs any person authorised under this Act by any order of the Commissioners to make any visit and examination or inquiry in the execution of such order, shall (without prejudice to any proceedings, and in addition to any punishment to which such person obstructing the execution of such order would otherwise be subject), be liable for every such offence to a penalty not exceeding twenty pounds.

322. If any manager, officer, nurse, attendant, servant, or other person employed in an institution for lunatics or any person having charge of a lunatic, whether by reason of any contract, or of any tie of relationship, or marriage, or otherwise, ill-treats or wilfully neglects a patient, he shall be guilty of a misdemeanor, and, on conviction on indictment, shall be liable to fine or imprisonment or to both fine and imprisonment at the discretion of the court, or be liable on summary conviction for every offence to a penalty not exceeding twenty pounds nor less than two pounds. Ill-treatment.

323. If any manager, officer, or servant of an institution for lunatics wilfully permits, or assists, or connives at the escape or attempted escape of a patient, or secretes a patient, he shall for every offence be liable to a penalty not exceeding twenty pounds nor less than two pounds. Penalties for permitting escape and for rescue.

324. If any manager, officer, nurse, attendant, or other person employed in any institution for lunatics (including an asylum for criminal lunatics), or workhouse, or any person having the care or charge of any single patient, or any attendant of any single patient carnally knows or attempts to have carnal knowledge of any female under care or treatment as a lunatic in the institution, or workhouse, or as a single patient, he shall be guilty of a mis- Abuse of female lunatic.

demeanor, and, on conviction on indictment, shall be liable to be imprisoned with or without hard labour for any term not exceeding two years; and no consent or alleged consent of such female thereto shall be any defence to an indictment or prosecution for such offence.

By whom proceedings to be taken. 325.—(1.) Except as by this Act otherwise provided, proceedings against any person for offences against this Act may be taken—

(a.) By the secretary of the Commissioners upon their order for any offence.

(b.) By the clerk of the visitors of any licensed house for an offence committed within their jurisdiction;

(c.) By the clerk of the visiting committee of an asylum for any offence by any person employed therein;

and such proceedings shall not abate by the death or removal of the prosecuting secretary or clerk, but the same may be continued by his successor, and in any such proceedings the prosecuting secretary or clerk shall be competent to be a witness.

(2.) Except as by this Act otherwise provided, it shall not be lawful to take such proceedings except by order of the Commissioners, or of visitors having jurisdiction in the place where the offence was committed, or with the consent of the Attorney-General or Solicitor-General.

Recovery and application of penalties. 326. All penalties enforceable under this Act shall be recovered summarily according to the provisions of the Summary Jurisdiction Acts, and shall be paid—

(a.) When recovered by the secretary of the Commissioners, to such secretary;

(b.) When recovered by the clerk of the visitors of a licensed house, to the clerk of the peace for the county or borough, to be applied in the same way as money received for licenses granted by the justices of the county or borough;

(c.) When recovered by a clerk of the visiting committee of an asylum, to the treasurer of the asylum for the purposes thereof;

(d.) In all other cases to the treasurer of the county or borough for which the convicting justices acted.

Appeals. 327. Any person aggrieved by an order of justices under this Act, other than orders adjudicating as to the settlement of a lunatic pauper and providing for his maintenance, may appeal to a court of quarter sessions, subject to the conditions and regulations of the Summary Jurisdiction Acts.

Secretary of State may direct prosecution. 328. A Secretary of State on the report of the Commissioners or visitors of any institution for lunatics may direct the Attorney-General to prosecute on the part of the Crown any person alleged to have committed a misdemeanor under this Act.

Evidence upon prosecution. 329.—(1.) Where any person is proceeded against under this Act on a charge of omitting to transmit or send any copy, list, notice, statement, report, or other document required to be transmitted or sent by such person, the burden of proof that the same was transmitted or sent within the time required shall lie upon such person; but if he proves by the testimony of one witness upon oath that the copy, list, notice, statement, report, or document in respect of which the proceeding is taken was properly addressed and put into the post in due time, or (in case of documents required to be sent to the Commissioners or a clerk of the peace or a clerk to guardians) left at the office

of the Commissioners or of the clerk of the peace or clerk to guardians, such proof shall be a bar to all further proceedings in respect of such charge.

(2.) In proceedings under this Act, where a question arises whether a house is or is not a licensed house or registered as a hospital, it shall be presumed not to be so licensed or registered unless the licence or certificate of registration is produced, or sufficient evidence is given that a licence or certificate is in force.

330.—(1.) A person who before the passing of this Act has signed or carried out or done any act with a view to sign or carry out an order purporting to be a reception order, or a medical certificate that a person is of unsound mind, and a person who after the passing of this Act presents a petition for any such order, or signs or carries out or does any act with a view to sign or carry out an order purporting to be a reception order, or any report or certificate purporting to be a report or certificate under this Act, or does anything in pursuance of this Act, shall not be liable to any civil or criminal proceedings whether on the ground of want of jurisdiction or on any other ground if such person has acted in good faith and with reasonable care.

Protection to persons putting the Act in force.

(2.) If any proceedings are taken against any person for signing or carrying out or doing any act with a view to sign or carry out any such order, report, or certificate, or presenting any such petition as in the preceding subsection mentioned, or doing anything in pursuance of this Act, such proceedings may, upon summary application to the High Court or a Judge thereof, be stayed upon such terms as to costs and otherwise as the Court or Judge may think fit, if the Court or Judge is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care.

331.—(1.) Any action brought by any person who has been detained as a lunatic against any person for anything done under this Act shall be commenced within twelve months next after the release of the party bringing the action, and shall be laid or brought in the county or borough where the cause of action arose, and not elsewhere.

Actions by persons detained as lunatics.

(2.) If the action is brought in any other county or borough or is not commenced within the time limited for bringing the same, judgment shall be given for the defendant.

332.—(1.) The Commissioners, or any two of them, and also the visitors of any licensed house, or any two of them, may, as they see occasion, require, by summons, under the common seal of the Commission, if by the Commissioners, and if by two only of the Commissioners or by two visitors, then under the hands and seals of such two Commissioners or two visitors, as the case may be, any person to appear before them to testify on oath touching any matters respecting which such Commissioners and visitors respectively are by this Act authorised to inquire (which oath such Commissioners or visitors are hereby empowered to administer).

Commissioners and visitors may summon witnesses.

Form 22.

(2.) Every person who does not appear pursuant to the summons, or does not assign some reasonable excuse for not appearing, or who appears and refuses to be sworn or examined, shall, on being convicted thereof before a court of summary jurisdiction for every such neglect or refusal be liable to a penalty not exceeding fifty pounds.

(3.) Any two or more Commissioners or visitors may, if they think fit, examine on oath any person appearing before them as a witness, without having been summoned.

(4.) Any Commissioners or visitors who summon a person to appear and give evidence, may direct the secretary of the Commissioners or the clerk of such visitors, as the case may be, to pay to such person all reasonable expenses of his appearance and attendance, the same to be considered as expenses incurred in the execution of this Act, and to be taken into account and paid accordingly.

PART XII

MISCELLANEOUS PROVISIONS, DEFINITIONS, REPEAL

- Indemnity to Bank and others.** 333. This Act, and every order purporting to be made under this Act, shall be a full indemnity and discharge to the Bank and every other company and society and their respective officers and servants, and all other persons respectively, for all acts and things done or permitted to be done pursuant thereto or pursuant to the Rules under this Act, so far as relates to any property in which a lunatic is interested either in his own right, or as trustee or mortgagee, and it shall not be necessary to inquire into the propriety of any order purporting to be made under this Act relating to any such property or the jurisdiction to make the same.
- Meaning of word commission in other Acts extended.** 334. Where in any Act of Parliament, order or rule of court, or instrument, reference is made to a commission of lunacy, or the inquisition thereon, the general commission and the inquisition, or certificate operating as an inquisition, and the issue and verdict thereon respectively in this Act mentioned, shall be deemed to be included in the reference.
- Pension of lunatic payable by public department.** 335. When any sum in respect of pay, pension, superannuation, or other allowance, or annuity under the control or management of any public department, is payable to any person, in respect either of service as a civil servant or of military or naval service or of provision for a widow or child of a person employed in civil, military, or naval service, and the person to whom the sum is payable is certified by a justice or minister of religion, and by a medical practitioner, to be unable by reason of mental disability to manage his or her affairs, the public department may pay so much of the said sum as the department may think fit to the institution or person having the care of the disabled person, and may pay the surplus, if any, or such part thereof as the department may think fit, for or towards the maintenance and benefit of the wife or husband and relatives of the disabled person, and the department shall be discharged from all liability in respect of any sums so paid.
- Forms 16, 17.** 336. In the case of orders made before the commencement of this Act for the reception of private patients, the person who signed the reception order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who before the commencement of this Act has signed an order for the reception of a private patient as if the order had been made after the commencement of this Act upon a petition presented by him.
- Reception orders before Act.**
- Power to** 337.—(1.) The Lord Chancellor may, if it seems expedient to him so to do,

by order under his hand, amalgamate the office of the Masters and their staff, and the office of the Chancery Visitors and their staff, and may amalgamate such offices, or either of them, with the office of the Commissioners, and may give such directions as he may think fit for the reconstitution of the Commissioners, and for the exercise and performance of the powers and duties of the Commissioners, and of the officers and staff amalgamated respectively under any order under this section.

(2.) In the event of any such amalgamation, the Lord Chancellor may, with the concurrence of the Treasury, fix the qualifications and salaries of the members of the amalgamated office and of the staff attached thereto, and may, with such concurrence, increase or diminish the number of such members and staff.

(3.) An order under this section shall not be made so as to prejudice the rights of the Masters, Visitors, and Commissioners respectively holding office at the passing of this Act.

(4.) The Lord Chancellor may by order direct that such proportion as he may consider reasonable of the expenses incurred in carrying any such amalgamation into effect, including the cost of providing office accommodation, shall be paid out of the percentage charged on the income of lunatics.

338.—(1.) It shall be lawful for the Commissioners, with the approval of the Lord Chancellor, by rules, to prescribe the books to be kept in institutions for lunatics and houses for single patients, and the entries to be made therein, and the returns, reports, extracts, copies, statements, notices, plans, documents, and information to be sent to the Commissioners or any authority or person, and the persons by whom, the times within which, and the manner in which, such entries, returns, reports, extracts, copies, statements, notices, plans, documents, and information are to be made and sent; and also by rules to prescribe forms for the purposes aforesaid in addition to or in substitution for any forms now in use.

Power to make rules.

(2.) Subject to the preceding sub-section, the Lord Chancellor may make rules for carrying this or any other Act relating to lunacy into effect, and also for regulating costs in relation thereto.

“[L. A., 1891, s. 27.—(2.) The power to make rules under section three hundred and thirty-eight, sub-section (2), of the principal Act shall extend to all applications under the principal Act and this Act, and also to applications in the Chancery Division of the High Court in cases where such applications are also made under the principal Act.]”

(3.) Where by any Act already passed or hereafter to be passed any application in lunacy is directed or authorised to be made by petition, or in any other specified manner, the Lord Chancellor may by rule direct in what manner the application is to be made.

(4.) The Lord Chancellor and a Secretary of State respectively may by rules provide for preventing interference or delay in the exercise of the ordinary jurisdiction of the judges of county courts and magistrates respectively by the transfer of petitions and notices or otherwise as such rules may direct.

(5.) Subject to any rules made under this section, the existing rules shall, so far as applicable, continue in force.

(6.) All rules made under the provisions of this section shall be laid before Parliament within three weeks after they are made if Parliament is then

sitting, and, if Parliament is not then sitting, within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(7.) A rule under the provisions of this section shall not come into operation until the expiration of one month after the same has been made and issued.

Forms.

339. Subject to rules made under this Act, the forms in the Second Schedule may be used, wherever applicable, with such modifications as circumstances may require, and if used, shall be deemed to be sufficient.

Savings as to criminal lunatics, &c. 49 & 50 Vict., c. 25. Definitions.

340.—(1.) Save as in this Act otherwise expressly provided this Act shall not extend to criminal lunatics.

(2.) This Act shall not affect the provisions of the Idiots Act, 1886.

341. In this Act, if not inconsistent with the context—

“Asylum” means an asylum for lunatics provided by a county or borough, or by a union of counties or boroughs :

“The Bank” means the Governor and Company of the Bank of England :

“Clerk,” in relation to a local authority, means, where the local authority is a county council, the clerk of the council, and where the local authority is a borough council, the town clerk of the borough :

“Commissioners” means the Commissioners in Lunacy :

“Contingent right,” as applied to lands, includes a contingent and executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent :

“Convey” and “conveyance” include the performance of all formalities required to the validity of conveyances by married women and tenants in tail under the “Act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance,” and also surrenders and other acts which a tenant of copyhold lands can perform preparatory to or in aid of a complete assurance of such copyhold lands :

“County,” for the purpose of the powers exercisable by justices of a county, does not include a county of a city or county of a town (except the City of London), but includes any county, riding, division, part, or liberty of a county having a separate court of quarter sessions :

“County borough” has the same meaning as in the Local Government Act, 1888 :

“Criminal lunatic” has the same meaning as in the Criminal Lunatics Act, 1884 :

“District asylum” means an asylum provided by two or more counties in union, or by any county or counties in union with any borough or boroughs :

“Dividends” includes interest and other annual produce :

“Guardians” means guardians appointed under the Poor Law Amendment Act, 1834, and the Acts amending the same, and includes guardians or other body of persons performing under any local Act the like functions as guardians under the Poor Law Amendment Act, 1834 :

“Hospital” means any hospital or part of a hospital or other house or institution (not being an asylum) wherein lunatics are received and

3 & 4 Will. 4,
c. 74.

51 & 52 Vict.,
c. 41.

47 & 48 Vict.,
c. 64.

4 & 5 Will. 4,
c. 76.

supported wholly or partly by voluntary contributions, or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients :

“Inquisition” includes an order, certificate, or verdict operating as an inquisition :

“Institution for lunatics” means an asylum, hospital, or licensed house :

“Justice” means a justice of the peace :

“Land” includes an undivided share of land :

“Lease” includes underlease :

“Lunatic” means an idiot or person of unsound mind :

“Magistrate” means a stipendiary magistrate and any magistrate appointed to act at any of the police courts of the metropolis :

“Manager” in relation to an institution for lunatics means the superintendent of an asylum, the resident medical officer or superintendent of a hospital, and the resident licensee of a licensed house :

“Masters” means the Masters in Lunacy :

“Medical officer” means, in the case of an asylum, the medical superintendent, or if the superintendent is not a medical practitioner the resident medical officer of the asylum, in the case of a hospital the superintendent, and in the case of a licensed house the resident medical practitioner, or if none the medical practitioner who visits the house as the medical attendant thereof :

“Medical practitioner” means a medical practitioner duly registered under the Medical Act, 1858, and the Acts amending the same, and the Medical Act, 1886 : 21 & 22 Vict.,
c. 90.
49 & 50 Vict.,
a. 48.

“Mortgage” includes every estate, interest, or property in real or personal estate, which is a security for money or money’s worth :

“Next of kin” includes heir at law, and the persons entitled under the statutes for the distribution of the estates of intestates :

“Pauper” means a person wholly or partly chargeable to a union, county, or borough :

“Paymaster-General” includes the Assistant Paymaster-General for Supreme Court business :

“Prescribed” means prescribed by this Act or by any rules under this Act :

“Private patient” means a patient who is not a pauper :

“Property” includes real and personal property, whether in possession, reversion, remainder, contingency, or expectancy, and any estate or interest, and any undivided share therein :

“Public department” means the Treasury, the Admiralty, and a Secretary of State, and any other public department of the Government :

“Quarter Sessions” includes general sessions :

“Quarter sessions borough” means a borough having a separate court of quarter sessions :

“Reception order” means an order or authority made or given before or after the commencement of this Act for the reception of a lunatic, whether a pauper or not, in an institution for lunatics or as a single patient, and includes an urgency order :

“Relative” means a lineal ancestor or lineal descendant, or a lineal

descendant of an ancestor not more remote than great-grandfather or great-grandmother :

“Stock” includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer alone, or by instrument of transfer, accompanied by other formalities, and any share or instrument therein, and also shares in ships registered under the Merchant Shipping Act, 1854 :

17 & 18 Vict.,
c. 104.

“Transfer” includes assignment, payment, and other disposition, and the execution, and performance, of every assurance and act to complete a transfer :

“Trust” and “trustee” include implied and constructive trusts, and cases where the trustee has some beneficial interest, and also the duties incident to the office of personal representative of a deceased person, but not the duties incident to an estate conveyed by way of mortgage :

“Union” means any parish or union of parishes for which there is a separate board of guardians :

“Visiting committee” means a committee of visitors of an asylum appointed under this Act :

30 Vict., c. 6.

“Workhouse” includes an asylum provided for reception and relief of the insane under the Metropolitan Poor Act, 1867, and the managers of every such asylum shall exercise the powers and perform the duties by this Act conferred and imposed upon the guardians of the union to which a workhouse belongs.

[“Seised” shall include any vested estate for life or of a greater description, and shall extend to estates at Law and in Equity in possession or in futurity in any lands.

“Possessed” shall include any vested estate less than a life estate at law or in equity in possession or in expectancy in any lands. (L. A., 1891, sec. 28)].

Repeal.

342. The Acts mentioned in the Fifth Schedule are hereby repealed to the extent set forth in the third column of the same schedule.

Provided that this repeal shall not affect any jurisdiction or practice established, confirmed, or transferred, or salary or compensation or superannuation secured, by or under any enactment repealed by this Act.

SCHEDULES

THE FIRST SCHEDULE

Declaration to be made by a Master

Section 111.

I, _____, declare that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the powers and trusts committed to me as one of the masters in lunacy, and that without favour or affection, prejudice or malice.

Declaration to be made by a Commissioner

Section 151.

I, _____, declare that I will discreetly, impartially, and faithfully execute all the powers and trusts committed to me as one of the Commissioners in Lunacy, and that I will keep secret all such matters as come to my knowledge in the execution of my office (except when required to divulge the same by legal authority, or so far as I feel myself called upon to do so for the better execution of my duties).

Declaration to be made by the Secretary and Clerks of the Commissioners Section 157.

I, _____, declare that I will faithfully execute all the trusts and duties committed to me as secretary of the Commissioners in Lunacy [*or*, as clerk of the Commissioners in Lunacy], and that I will keep secret all such matters as come to my knowledge in the execution of my office (except when required to divulge the same by legal authority).

Declaration to be made by Assistants to the Clerk of the Visitors Section 179.

I, _____, declare that I will faithfully keep secret all matters and things which come to my knowledge in consequence of my employment as assistant to the clerk of the visitors of licensed houses appointed for the county [*or* borough] of _____ unless required to divulge the same by legal authority.

THE SECOND SCHEDULE

Section 339.

FORM 1

Petition for an Order for reception of a Private Patient

Sections 4, 5.

In the matter of *A. B.* a person alleged to be of unsound mind.
To _____ a justice of the peace for _____

[*or*

To His Honour the judge of the county court of _____
pendiary magistrate for _____

or To

.]

[1] Full postal address and rank, profession, or occupation.

[2] At least twenty-one.

[3] or an idiot or person of unsound mind.

[4] Insert a full description of the name and locality of the asylum, hospital, or licensed house, or the full name, address, and description of the person who is to take charge of the patient as a single patient.

[5] Some day within fourteen days before the date of the presentation of the petition.

[6] Here state the connection or relationship with the patient.

The petition of *C.D.* of [1] in the county of

1. I am [2] years of age.

2. I desire to obtain an order for the reception of *A.B.* as a lunatic [3] in the asylum [or hospital or house as the case may be] of

situate at [4]

3. I last saw the said *A.B.* at on the [5] day of

4. I am the [6] of the said *A.B.* [or if the petitioner is not connected with or related to the patient state as follows;]

I am not related to or connected with the said *A.B.* The reasons why this petition is not presented by a relation or connection are as follows: [state them.]

The circumstances under which this petition is presented by me are as follows: [state them.]

5. I am not related to or connected with either of the persons signing the certificates which accompany this petition as (*where the petitioner is a man*) husband, father, father-in-law, son-in-law, brother, brother-in-law, partner or assistant (*or where the petitioner is a woman*) wife, mother, mother-in-law, daughter, daughter-in-law, sister, sister-in-law, partner or assistant.

6. I undertake to visit the said *A.B.* personally or by some one specially appointed by me at least once in every six months while under care and treatment under the order to be made on this petition.

7. A statement of particulars relating to the said *A.B.* accompanies this petition.

If it is the fact add:

8. The said *A.B.* has been received in the asylum [or hospital or house as the case may be] under an urgency order dated the

The petitioner therefore prays that an order may be made in accordance with the foregoing statement.

[Signed]

full Christian and surname.

Date of presentation of the Petition.

Sections 4, 5, 11.

FORM 2

Statement of Particulars

STATEMENT of particulars referred to in the annexed petition [or in the above or annexed order].

The following is a statement of particulars relating to the said *A.B.* [1] :—

Name of patient, with Christian name at length.

Sex and age.

†Married, single, or widowed.

†Rank, profession, or previous occupation (if any).

†Religious persuasion.

Residence at or immediately previous to the date hereof.

†Whether first attack.

Age on first attack.

When and where previously under care and treatment as a lunatic, idiot, or person of unsound mind.

†Duration of existing attack.

[1] If any particulars are not known, the fact is to be so stated. [Where the patient is in the petition or order described as an idiot omit the particulars marked †].

Supposed cause.

Whether subject to epilepsy.

Whether suicidal.

Whether dangerous to others, and in what way.

Whether any near relative has been afflicted with insanity.

Names, Christian names, and full postal addresses of one or more relatives of the patient.

Name of the person to whom notice of death to be sent, and full postal address if not already given.

Name and full postal address of the usual medical attendant of the patient.

(Signed)

When the petitioner or person signing an urgency order is not the person who signs the statement, add the following particulars concerning the person who signs the statement.

Name with Christian name at length.

Rank, profession, or occupation (if any).

How related to or otherwise connected with the patient.

FORM 3

Section 6.

Order for reception of a private patient to be made by a Justice appointed under the Lunacy Act, 1890, Judge of County Courts, or Stipendiary Magistrate

I, the undersigned *E.F.*, being a Justice for _____ specially appointed under the Lunacy Act, 1890 [*or* the Judge of the County Court of _____

or the Stipendiary Magistrate for _____], upon the petition of *C.D.*, of [_____] in the matter of *A.B.* a lunatic, [²] accompanied by the

medical certificates of *G.H.* and *I.J.* hereto annexed, and upon the undertaking of the said *C.D.* to visit the said *A.B.* personally or by some one specially appointed by the said *C.D.* once at least in every six months while under care and treatment under this order, hereby authorise you to receive the said *A.B.* as a patient into your asylum [³]. And I declare that I have [*or* have not] personally seen the said *A.B.* before making this order.

[¹] Address and description.

[²] Or an idiot or person of unsound mind.

[³] Or hospital or house or as a single patient.

Dated _____

(Signed) *E.F.*

A Justice for _____ appointed under the above-mentioned Act, [*or* The Judge of the County Court of _____ *or* a Stipendiary Magistrate.]

[⁴] To be addressed to the medical superintendent of the asylum or hospital, or to the resident licensee of the house in which the patient is to be placed.

To [⁴]

FORM 4

Section 11.

Form of urgency Order for the reception of a private patient

I, the undersigned, being a person twenty-one years of age, hereby authorise you to receive as a patient into your house [¹] *A.B.*, as a lunatic [²], whom I

[¹] Or hospital or asylum or as a single patient.

[²] Or an idiot or a person of unsound mind.

[³] Some day last saw at on the [³] day of 18 .
 within two days before I am not related to or connected with the person signing the certificate which
 the date of the order. accompanies this order in any of the ways mentioned in the margin [⁴]. Sub-

[⁴] Husband, joined [or annexed] hereto [⁶] is a statement of particulars relating to the
 said *A.B.*

father-in-law, mother,
 mother-in-law, son,
 son-in-law, daughter,
 daughter-in-law, brother,
 brother-in-law, sister,
 sister-in-law, partner, or
 assistant.
 [⁵] See Form 2.

Signed Name and Christian name at length
 Rank, profession, or occupation (if any)
 Full postal address
 How related to or connected with the patient
 [If not the husband or wife or a relative of the patient, the person signing to state as briefly as possible: 1. Why the order is not signed by the husband or wife or a relative of the patient. 2. His or her connexion with the patient, and the circumstances under which he or she signs.]

Describing the asylum, hospital, or house by situation and name.

Dated this day of , 18 .
 To superintendent of the asylum
 hospital or resident licensee of the house].

Section 8.

FORM 5

Certificate as to Personal Interview after reception

I certify that it would be prejudicial to *A.B.* to be taken before or visited by a justice, a judge of county courts, or magistrate.

(Signed *C.D.*,
 Medical Superintendent of the
 Asylum or Hospital
 or Resident Medical Practitioner or
 Attendant of the , or
 Medical Attendant of the said *A.B.*

Section 8.

FORM 6.

Notice of Right to Personal Interview

Take notice that you have the right, if you desire it, to be taken before or visited by a justice, judge of county courts, or magistrate. If you desire to exercise such right, you must give me notice thereof by signing the enclosed form on or before the day of

Dated

Signed *C.D.*
 Superintendent of the
 Asylum or Hospital
 or Resident Licensee of
 [or as the case may be.]

FORM 7

Section 8.

Notice of Desire to have a Personal Interview

Dated

[Address]

I desire to be taken before or visited by a justice, judge, or magistrate having jurisdiction in the district within which I am detained.

Signed

FORM 8

Certificate of Medical Practitioner

In the matter of *A.B.* of [1] in the county [2] of
an alleged lunatic.

I, the undersigned *C.D.*, do hereby certify as follows :

1. I am a person registered under the Medical Act, 1858, and I am in the actual practice of the medical profession.

2. On the day of 18 , at [4] in the county [5] of
[separately from any other practitioner] [6], I personally examined
the said *A.B.* and came to the conclusion that he is a [lunatic, an idiot, or a
person of unsound mind] and a proper person to be taken charge of and
detained under care and treatment.

3. I formed this conclusion on the following grounds, viz. :—

(a.) Facts indicating insanity observed by myself at the time of examination [7], viz. :—

(b.) Facts communicated by others, viz. :—[8]

[If an urgency certificate is required it must be added here. See Form 9.]

4. The said *A.B.* appeared to me to be [or not to be] in a fit condition of
bodily health to be removed to an asylum, hospital, or licensed house.[9]

5. I give this certificate having first read the section of the Act of Parliament printed below.

Dated

(Signed) *C.D.*, of [10]*Extract from Section 317 of the Lunacy Act, 1890*

Any person who makes a wilful misstatement of any material fact in any medical or other certificate or in any statement or report of bodily or mental condition under this Act, shall be guilty of a misdemeanor.

Sections 4, 11,
16, 23, 24.

[1] Insert
residence of
patient.

[2] City or
borough, as
the case may
be.

[3] Insert
profession or
occupation, if
any.

[4] Insert the
place of
examination,
giving the
name of the
street, with

number or
name of
house, or
should there
be no number
the christian
and surname
of occupier.

[5] City or
borough, as
the case may
be.

[6] Omit this
where only
one certificate
is required.

[7] If the same
or other facts
were ob-

served pre-
vious to the
time of the
examination,
the certifier
is at liberty
to subjoin
them in a
separate
paragraph.

[8] The names
and christian
names (if
known) of in-
formants to
be given, with
their ad-
dresses and
descriptions.

[9] Strike out
this clause
in case of a
private pa-

tient whose
removal is
not proposed
[10] Insert full
postal ad-
dresses.

Sections 11,
28.

FORM 9

Statement accompanying Urgency Order

I certify that it is expedient for the welfare of the said *A.B.* [*or for the public safety, as the case may be*] that the said *A.B.* should be forthwith placed under care and treatment.

My reasons for this conclusion are as follows: [*state them*].

Section 24.

FORM 10

Certificate as to pauper Lunatic in a Workhouse

I, the undersigned Medical Officer of _____ Workhouse of the
Union hereby certify that I have carefully examined into
the state of health and mental condition of *A.B.*, a pauper in the said work-
house, and that he is in my opinion a lunatic, and a proper person to be
allowed to remain in the workhouse as a lunatic, and that the accommodation
in the workhouse is sufficient for his proper care and treatment separate
from the inmates of the workhouse not lunatics [*or, that his condition is such
that it is not necessary for the convenience of the lunatic or of the other
inmates that he should be kept separate*].

The grounds for my opinion that the said *A.B.* is a lunatic are as follows :

Dated _____

(Signed)

Medical Officer of the Workhouse.

Section 24.

FORM 11

Order for detention of Lunatic in Workhouse

I, the undersigned *C.D.*, a justice of the peace for _____ being
satisfied that *A.B.*, a pauper in the _____ workhouse of the
is a lunatic [*or idiot or person of unsound mind*] and a proper person to be
taken charge of under care and treatment in the workhouse, and being
satisfied that the accommodation in the workhouse is sufficient for his proper
care and treatment separate from the inmates of the workhouse not lunatics
[*or, that his condition is such that it is not necessary for the convenience of
the lunatic or of the other inmates that he should be kept separate*] hereby
authorise you to take charge of, and, if the workhouse medical officer shall
certify it to be necessary, to detain the said *A.B.* as a patient in your work-
house. Subjoined is a statement of particulars respecting the said *A.B.*

(Signed) *C.D.*,

A justice of the peace
for _____

Dated _____

To the Master of the
Workhouse

of the _____

Statement of Particulars

Name of patient and Christian name at length.

Sex and age.

Married, single, or widowed.

Condition of life and previous occupation (if any).

Religious persuasion as far as known.

Previous place of abode.

Whether first attack.

Age (if known) on first attack.

When and where previously under care and treatment.

Duration of existing attack.

Supposed cause.

Whether subject to epilepsy.

Whether suicidal.

Whether dangerous to others.

Whether any near relative has been afflicted with insanity.

Name and Christian name and address of nearest known relative of the patient and degree of relationship if known.

I certify that to the best of my knowledge the above particulars are correct.

[To be signed by the relieving officer.]

FORM 12

Order for reception of a Pauper Lunatic or Lunatic wandering at large Section 16.

I, C.D., having called to my assistance E.F. of _____, a duly qualified medical practitioner, and being satisfied that A.B. [*describing him*] is a pauper in receipt of relief [*or in such circumstances as to require relief for his proper care and maintenance*], and that the said A.B. is a lunatic [*or an idiot, or a person of unsound mind*] and a proper person to be taken charge of and detained under care and treatment, *or* that A.B. [*describing him*] is a lunatic, and was wandering at large, and is a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A.B. as a patient into your asylum [*or hospital, or house*]. Subjoined is a statement of particulars respecting the said A.B.

(Signed) C.D.,

A justice of the peace for

Dated the _____ day of _____ one thousand eight hundred and

To the superintendent of the asylum for the county [*or borough*] of _____ [*or the lunatic hospital of* _____; *or E.F.* _____ proprietor of the licensed house of _____; describing the asylum, hospital, or house].

Note.—Where the order directs the lunatic to be received into any asylum, other than an asylum of the county or borough in which the parish or place from which the lunatic is sent is situate, or into a registered hospital or licensed house, it shall state, that the justice making the order is satisfied that there is no asylum of such county or borough, or that there is a deficiency of room in such asylum; or (as the case may be) the special circumstances, by reason whereof the lunatic cannot conveniently be taken to an asylum for such first-mentioned county or borough.

[¹] If any particulars are not known, the fact is to be so stated. [Where the patient is in the order described as an idiot omit the particulars marked †].

Statement of Particulars

STATEMENT of particulars referred to in the above or annexed order.

The following is a statement of particulars relating to the said *A.B.* [¹]:—

Name of patient, with Christian name at length.

Sex and age.

†Married, single, or widowed.

†Rank, profession, or previous occupation (if any).

†Religious persuasion.

Residence at or immediately previous to the date hereof.

†Whether first attack.

Age on first attack.

When and where previously under care and treatment as a lunatic, idiot, or person of unsound mind.

†Duration of existing attack.

Supposed cause.

Whether subject to epilepsy.

Whether suicidal.

Whether dangerous to others, and in what way.

Whether any near relative has been afflicted with insanity.

Union to which lunatic is chargeable.

Names, Christian names, and full postal addresses of one or more relatives of the patient.

Name of the person to whom notice of death to be sent, and full postal address if not already given.

(Signed) *G.H.*

To be signed by the Relieving Officer or Overseer.

Section 229.

FORM 14.

Consent to the admission of a boarder

We hereby sanction the admission of *A.B.* as a boarder into
for the term of _____ from the
day of _____ in accordance with the provisions of the
statute and in terms of *A.B.*'s application.

(Signed)

Two of the Commissioners in Lunacy.

[or Two of the justices for _____.]

Dated the _____ day of _____ 18 .

Section 13.

FORM 15.

Order for Reception of a Lunatic not under proper care and control, or cruelly treated or neglected, to be made by a Justice appointed under the Lunacy Act, 1890.

I, the undersigned *C.D.*, being a Justice for _____ specially appointed under the Lunacy Act, 1890, having caused *A.B.* to be examined by two duly qualified medical practitioners, and being satisfied that the said *A.B.* is a lunatic not under proper care and control [or is cruelly treated or neglected

by the person having the care or charge of him], and that he is a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said *A.B.* as a patient into your asylum [*or hospital or house*] Subjoined is a statement of particulars respecting the said *A.B.*

(Signed)

A justice of the peace for
appointed under the above-men-
tioned Act.

Dated

To the Superintendent of the Asylum for ; or of the
lunatic hospital of , or the resident licensee of the
licensed house at .

Note.—Where the order directs the lunatic to be received into any asylum, other than an asylum of the county or borough in which the parish or place from which the lunatic is sent is situate, or into a registered hospital or licensed house, it shall state, that the justice making the order is satisfied that there is no asylum of such county or borough, or that there is a deficiency of room in such asylum; or (as the case may be) the special circumstances, by reason whereof the lunatic cannot conveniently be taken to an asylum for such first-mentioned county or borough.

Statement of Particulars

STATEMENT of particulars referred to in the above or annexed order.

The following is a statement of particulars relating to the said *A.B.* [1] :—

Name of patient, with Christian name at length.

Sex and age.

†Married, single, or widowed.

†Rank, profession, or previous occupation (if any).

†Religious persuasion.

Residence at or immediately previous to the date hereof.

†Whether first attack.

Age on first attack.

When and where previously under care and treatment as a lunatic, idiot, or person of unsound mind.

†Duration of existing attack.

Supposed cause.

Whether subject to epilepsy.

Whether suicidal.

Whether dangerous to others, and in what way.

Whether any near relative has been afflicted with insanity.

Union to which lunatic is chargeable.

Names, Christian names, and full postal addresses of one or more relatives of the patient.

Name of the person to whom notice of death to be sent, and full postal address if not already given.

(Signed)

To be signed by the relieving officer,
overseer, or other person on whose
information the order is made.

[1] If any particulars are not known, the fact is to be so stated. [Where the patient is in the order described as an idiot omit the particulars marked †].

Section 335.

FORM 16

Certificate of Disability of Person entitled to Payments from a Public Department

I, _____, being a justice of the peace for
 or the rector, or vicar, or minister [state the denomination and residence],
 hereby certify that I know the said *A.B.*, and that I believe him or her to be
 unable, by reason of mental disability, to manage his or her affairs; and I
 further certify that I believe the family of the said *A.B.* to consist of

Dated

Signed [Name].

[Place of abode].

Section 335.

FORM 17

Medical Certificate of Disability of Person entitled to payments from a Public Department

I, _____, being a person registered under the Medical Act, 1858,
 and in the actual practice of my profession, hereby certify, that I have this day
 visited and personally examined *A.B.*, and that the said *A.B.* is unable by
 reason of mental disability to manage his or her affairs, and that I have
 formed this conclusion on the following grounds, viz: [state them].

Dated

Signed [Name].

[Postal Address in full.]

Section 207.

FORM 18

Form of Licence by Commissioners for a House not previously licensed

KNOW ALL MEN, that we, the Commissioners in Lunacy, do hereby certify
 that *A.B.* of _____ in the parish of _____ in the
 county of _____ has delivered to us a plan and description of a
 house and premises situate at _____ in the county of _____
 proposed to be licensed for the reception of lunatics, and we having considered
 and approved the same, do hereby authorize the said *A.B.* (he undertaking
 to reside therein) to use the said house and premises for the reception of
 _____ male [or _____ female, or _____ male and
 _____ female] lunatics, of whom not more than _____ shall be
 private patients, for _____ calendar months from this date.

Sealed with our common seal this _____ day of _____ 18

Witness,

Y.Z., Secretary to the Commissioners of Lunacy.

Section 207.

FORM 19

Form of Licence by Justices for a House not previously licensed

KNOW ALL MEN, that we, the undersigned justices of the peace, acting in
 and for _____ in general [or quarter or special] sessions assembled, do
 hereby certify that *A.B.* of _____ in the parish of _____ in the
 county of _____ has delivered to the clerk of the peace a plan and

description of a house and premises, situate at _____ in the county of _____ proposed to be licensed for the reception of lunatics, and has applied to us for a licence thereof: And whereas the Commissioners in Lunacy have reported upon the said application, and their report has been received, and has been taken into consideration by us; Now we, having considered and approved the application, do hereby authorise the said *A.B.* (he undertaking to reside therein) to use the said house and premises for the reception of male [*or female or* _____ male and _____ female] lunatics, of whom not more than _____ shall be private patients, for the space of _____ calendar months from this date.

Given under our hands and seals this _____ day of _____ 18 _____

Witness, *Y.Z.*, Clerk of the Peace.

FORM 20

Section 207.

Licence by Commissioners or Justices for a House previously licensed

KNOW ALL MEN, that we, the Commissioners in Lunacy [*or we the undersigned justices of the peace, for _____ in general (or quarter or special) sessions assembled*] do hereby certify that *A.B.* of _____ in the parish of _____ in the county of _____ has delivered to us [*or the clerk of the peace*] a list of the number of patients now detained in a house and premises situate at _____ in the county of _____ licensed on the _____ day of _____ for the reception of lunatics, and we, having considered the same, do hereby authorise the said *A.B.*, he undertaking to reside therein, to use the said house and premises for the reception of _____ male [*or female or* _____ male and _____ female] lunatics, of whom not more than _____ shall be private patients, for _____ calendar months from this date.

Sealed with our common seal [*or given under our hands and seals*], this _____ day of _____

Witness,

Y.Z., Secretary to the Commissioners in Lunacy,
[*or Clerk of the Peace*].

FORM 21

Section 248.

FORM OF AGREEMENT for uniting for the purpose of erecting or providing an asylum for the reception of lunatics.

It is agreed this _____ day of _____ between the visiting committees for the county of _____ and the borough of _____ [*as the case may be*], that the said county and borough [*as the case may be*], shall henceforth be united for the purposes of the Lunacy Act, 1890; and that an asylum for the reception of lunatics, with all necessary buildings, courts, yards, and outlets, shall be immediately provided and properly fitted up and accommodated for the purposes mentioned in the said Act; and that the necessary expenses attending the providing, building, fitting up, repairs, and maintenance of the said asylum shall be defrayed by the said county and borough, so united in the following proportions, such proportions being fixed according to the probable extent of the accommodation required for the lunatics of the contracting county and borough; (that is to say),

The county of

Five ninths of the said expenses.

The borough of

Four ninths of the same.

[as the case may be, or if the expenses are not fixed with reference to the probable extent of the accommodation, insert instead of the last clause.]

The expenses shall be from time to time charged upon and raised by such county and borough in proportion to their respective populations as stated in the last return for the time being made of the same under the authority of Parliament.

And it is further agreed, that the committee of visitors to superintend the building, erection, and management of the said asylum shall be appointed in the following proportions; the council for the said county of

shall appoint* , and the council for the borough of shall appoint* and the proportions in which the said committee of visitors are to be appointed as aforesaid may be from time to time varied, with the consent in writing under the hands of the greater number of visitors of the said county and borough, and with the consent of the Commissioners in Lunacy. And hereunto, we, the undersigned, being the majority of each of the committees appointed by the said councils respectively, do on behalf of the said councils set our hands and seals, this day of .

FORM 22

FORM OF SUMMONS.

Section 332. WE, the Commissioners in Lunacy [or we whose names are hereunto set and seals affixed, being two of the Commissioners in Lunacy, or visitors of], do hereby summon you personally to appear before us at in the parish of in the county of on next the day of at the hour of in the noon of the same day, and then and there to be examined, and to testify the truth touching certain matters relating to the execution of the Lunacy Act, 1890.

Scaled with the common seal of "The Commissioners in Lunacy" [or Given under our hands and seals] this day of .

THE THIRD SCHEDULE

Section 208. PLACES WITHIN IMMEDIATE JURISDICTION OF COMMISSIONERS

The cities of London and Westminster, the counties of London and Middlesex, and the following parishes and places; (that is to say), Barnes, Kew Green, Mortlake, Merton, Mitcham, and Wimbledon, in the county of Surrey; Southend, in the county of Kent; and East Ham, Leyton, Leytonstone, Low Leyton, Plaistow, West Ham, and Walthamstow, in the county of Essex; and also every other place, if any, within the distance of seven miles from any part of the cities of London or Westminster, or of the borough of Southwark.

* Insert in these blanks either the number or the proportion of visitors; and where the number of the committee of visitors is not fixed in the agreement, but only the proportions, a provision shall be made by the agreement for fixing from time to time the number of such committee.

THE FOURTH SCHEDULE

BOROUGHS THE COUNCILS OF WHICH ARE LOCAL AUTHORITIES UNDER THIS ACT* Sections 169,
240, 245, 246.

Barnstaple.	Dover.†	Newark.	Rochester.
Bedford.	Grantham.	Newbury.	Scarborough.
Berwick-on-Tweed.	Gravesend.	Newcastle-under-Lyme.	Shrewsbury.
Bridgwater.	Guildford.		Tiverton.
Bury-St. Edmunds.	Hereford.	New Sarum.	Warwick.
Cambridge.	Kings Lynn.	New Windsor.	Wenlock.
Colchester.	London (City of).	Penzance.	Winchester.
Doncaster.	Maidstone.†	Poole.	

THE FIFTH SCHEDULE.

Session and Chapter.	Title or Short Title.	Extent of Repeal.	Section 342.
4 & 5 Will. 4 c. 76.	An Act for the amendment and better administration of the Laws relating to the Poor in England and Wales.	Section forty-five.	
8 & 9 Vict. c. 100.	An Act for the regulation of the care and treatment of lunatics.	The whole Act.	
13 & 14 Vict. c. 60.	The Trustee Act, 1850 .	Sections three, four, five, six, and fifty-six.	
	Sections twenty, twenty-six, twenty-seven, twenty-eight, thirty-one, forty, forty-one, forty-two, forty-four, forty-five, fifty-one, fifty-two, and fifty-three, so far as they relate to "the Lord Chancellor entrusted as aforesaid."		
	Except so far as the above sections relate to Ireland.		
15 & 16 Vict. c. 48.	An Act for the amendment of the law respecting the property of lunatics.	The whole Act.	
15 & 16 Vict. c. 55.	An Act to extend the provisions of the Trustee Act, 1850.	Sections six and seven, so far as relates to the Lord Chancellor entrusted as aforesaid, and sections ten and eleven.	
		Except so far as the above sections relate to Ireland.	
16 & 17 Vict. c. 70.	The Lunacy Regulation Act, 1853.	The whole Act.	
16 & 17 Vict. c. 96.	An Act to amend an Act passed in the ninth year of Her Majesty for the regulation of the care and treatment of lunatics.	The whole Act.	
16 & 17 Vict. c. 97.	The Lunatic Asylums Act, 1853	The whole Act.	
18 Vict. c. 13	An Act to amend and explain the Lunacy Regulation Act, 1853.	The whole Act.	
18 & 19 Vict. c. 105.	An Act to amend the Lunatic Asylums Act, 1853, and the Acts passed in the ninth and seventeenth years of Her Majesty for the Regulation of the Care and Treatment of Lunatics.	The whole Act.	

* The names Dover and Maidstone were removed from this list by the L. A., 1891, as from the commencement of the L. A., 1890.

† Repealed as from the commencement of the L. A., 1890.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
19 & 20 Vict. c. 87.	An Act to amend the Lunatic Asylums Act, 1853.	The whole Act.
23 & 24 Vict. c. 127.	An Act to amend the law relating to attorneys, solicitors, proctors, and certificated conveyancers.	Section twenty-nine.
24 & 25 Vict. c. 55.	An Act to amend the laws regarding the removal of the poor, and the contribution of parishes to the common fund in unions.	Section seven.
25 & 26 Vict. c. 86.	The Lunacy Regulation Act, 1862.	The whole Act.
25 & 26 Vict. c. 111.	The Lunacy Acts Amendment Act, 1862.	The whole Act.
26 & 27 Vict. c. 110.	The Lunacy Acts Amendment Act, 1863.	The whole Act.
28 & 29 Vict. c. 80.	The Lunacy Act Amendment Act, 1865.	The whole Act.
30 Vict. c. 6	The Metropolitan Poor Act, 1867	In section thirty, the words "and every such asylum" to the end of the section.
30 & 31 Vict. c. 87.	The Court of Chancery (Officers) Act, 1867.	Section thirteen.
30 & 31 Vict. c. 106.	The Poor Law Amendment Act, 1867.	Section twenty-two, except as regards persons suffering from delirium tremens, or from bodily disease of a contagious or infectious character.
31 & 32 Vict. c. 122.	The Poor Law Amendment Act, 1868.	Section forty-three.
34 & 35 Vict. c. 14.	The County Property Act, 1871	Section two.
38 & 39 Vict. c. 77.	The Supreme Court of Judicature Act, 1875.	Section seven. In section twenty-six, the words "(including the percentage on estates of lunatics)" and the words "(including the masters and other officers in lunacy)".
45 & 46 Vict. c. 82.	The Lunacy Regulation Amendment Act, 1882.	The whole Act.
48 & 49 Vict. c. 52.	The Lunacy Acts Amendment Act, 1885.	The whole Act.
51 & 52 Vict. c. 41.	The Local Government Act, 1888	Section thirty-two, sub-section three, sub-clause (c); section eighty-six, sub-sections one, two, three, four, six, seven, and eight.
52 & 53 Vict. c. 41.	The Lunacy Acts Amendment Act, 1889.	The whole Act.

LUNACY ACT, 1891.

CHAPTER 65

An Act to amend the Lunacy Act, 1890.

[5th August 1891.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Lunacy Act, 1891, and this Act shall be construed as one with the Lunacy Act, 1890 (in this Act called the principal Act), and this Act and the principal Act may be cited together as the Lunacy Acts, 1890 and 1891. 53 and 54
Vict., c. 5.
Short title.

S. 2 (s. 22).*

S. 3 (ss. 13 and 16).

S. 4 } s. 24.

S. 5 }

S. 6 (s. 27).

S. 7 (s. 38).

S. 8 (s. 39).

S. 9 (s. 55).

S. 10 (s. 56 [3]).

S. 11 (s. 61 [1]).

S. 12 (s. 232).

S. 13 }

S. 14 } (s. 246).

S. 15 }

S. 16 (s. 254 [2]).

S. 17 (s. 269 [2]).

S. 18 (s. 278).

S. 19 (s. 237).

S. 20 (s. 229).

* The references in parentheses, printed with the various sections of this Act, are intended to indicate the portions of the principal Act with which those sections will be found.

- S. 21 (s. 237).
 S. 22 (s. 298).
 S. 23 (Schedule 2, Form 1).
 S. 24 } (s. 10).
 S. 25 }
 S. 26 (s. 94 [2]).
 S. 27 (1) (s. 110).
 (2) (s. 338 [2]).
 (3) (to follow s. 148).
 (4) (s. 116 [2]).
 S. 28 (s. 341).

Repeal.

S. 29. The enactments in the schedule are hereby repealed.

THE SCHEDULE.
 ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
53 & 54 Vict., c. 5	The Lunacy Act, 1890	<p>Section nine, sub-section one, from "having" to the end of the sub-section.</p> <p>Section ten, in sub-section one the words "within the county and borough respectively," and in sub-section four the words "within the same" occurring twice.</p> <p>Section thirteen, sub-section two, from "within" to "jurisdiction."</p> <p>Section twenty-four, sub-section six, from "that a pauper" to "asylum" where that word next occurs.</p> <p>Section sixty-two.</p> <p>Section ninety-nine, the words "with a jury."</p> <p>Section one hundred and forty-nine.</p> <p>Section two hundred and forty-six, from "subject" to "an asylum."</p> <p>Section two hundred and seventy-nine.</p> <p>Section three hundred and thirty-eight, sub-section two, the words "in lunacy."</p> <p>The Second Schedule, Form 13.</p> <p>The Fourth Schedule, the references to "Dover" and "Maidstone" repealed as from the commencement of the Lunacy Act, 1890.</p>

IDIOTS ACT, 1886.

CHAPTER 25

An Act for giving facilities for the care, education, and training of Idiots and Imbeciles. [25th June, 1886.]

WHEREAS it is expedient to make provision for the admission into hospitals, institutions, and licensed houses of idiots and imbeciles, and for their care, education, and training therein :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Idiots Act, 1886.
2. This Act shall not extend to Scotland or Ireland.
3. This Act shall commence from and immediately after the thirty-first day of December, one thousand eight hundred and eighty-six.
4. An idiot or imbecile from birth or from an early age may, if under age, be placed by his parents or guardians or by any person undertaking and performing towards him the duty of a parent or guardian, and may lawfully be received into, and until of full age detained in, any hospital, institution, or licensed house, registered under this Act for the care, education, and training of idiots or imbeciles upon the certificate in writing of a duly qualified medical practitioner in the Form One in the Schedule that the person to whom such certificate relates is an idiot or imbecile, capable of receiving benefit from such hospital, institution, or licensed house, accompanied by a statement in the Form Two in the Schedule signed by the parent or guardian of the idiot or imbecile, or the person undertaking or performing towards him the duty of a parent or guardian.
5. Any idiot or imbecile who has while under age been received under this Act into any hospital, institution, or licensed house, registered under this Act may, with the consent in writing of the Commissioners in Lunacy, be retained therein after he is of full age, and an idiot or imbecile from birth or from an early age may be received into any hospital, institution, or licensed house, registered under this Act after he is of full age upon the certificate in writing of a duly qualified medical practitioner in the Form One in the Schedule, accompanied by a statement in the Form Two in the Schedule signed by the parent or guardian of the idiot or imbecile, or the person undertaking or performing towards him the duty of a parent or guardian.
6. The Commissioners may at any time, by order, direct any person of full age retained in any hospital, institution, or licensed house, registered under this Act to be discharged therefrom, and such order shall specify the reason or reasons for such discharge and the date thereof.
7. The managing committee or the principal officer of every hospital, institution, or licensed house, in which idiots or imbeciles are intended to be received under this Act shall apply to the Commissioners to have the hospital, institution, or licensed house registered in the office of the Commissioners, and the Commissioners, if satisfied upon inquiry that the hospital,

Short title.
Extent of
Act.
Commence-
ment.

Hospitals,
institutions,
and licensed
houses for
idiots and
imbeciles.

Retention
and
admission of
idiots and
imbeciles
after full
age.

Order of dis-
charge by
Commis-
sioners in
Lunacy.

Registration
of hospitals,
institutions,
and licensed
houses under
this Act.

institution, or licensed house, is a proper one to be registered, shall issue a certificate of registration accordingly; and no idiot or imbecile shall be received into any hospital, institution, or licensed house, under this Act, until the same hospital, institution, or licensed house has been duly registered.

Provision for existing hospitals, institutions, and licensed houses for idiots or imbeciles.

Notice of reception to be sent to Commissioners in Lunacy.

8. Any hospital, institution, or licensed house, which at the passing of this Act is devoted exclusively to the care, education, and training of idiots or imbeciles may be registered under this Act, and all idiots and imbeciles lawfully retained therein at the passing of this Act may continue to be so retained without further certification.

9. When any idiot or imbecile is first received into a hospital, institution, or licensed house, registered under this Act, the superintendent or principal officer thereof shall, within fourteen days, certify in writing under his hand to the Commissioners in the Form Three in the Schedule the fact and time of his reception, specifying his name and age and the names and addresses of the persons placing him in such hospital, institution, or licensed house, and that he is alleged to be capable of deriving benefit from the treatment to be received therein.

Notice of death or discharge.

10. When any idiot or imbecile dies in any hospital, institution, or licensed house, registered under this Act, or is discharged therefrom, the superintendent or principal officer thereof shall forthwith notify in writing such death or discharge to the Commissioners.

Certain provisions of Lunacy Acts not to apply to this Act.

11. The provisions of any Act relating to the registration and regulation of hospitals, asylums, and licensed houses for the reception of lunatics, to the orders, certificates, or reports necessary for the reception, detention, or treatment of lunatics, and to the care, treatment, and visitation of lunatics, and the books to be kept and the reports to be made concerning lunatics respectively, shall not apply to any hospital, institution, or licensed house, registered under this Act, or to any idiot or imbecile received or to be received therein under the provisions of this Act.

Inspection by Commissioners.

12. The Commissioners shall at least once in every twelve months visit and inspect every hospital, institution, and licensed house, registered under this Act, and all the children and other persons under treatment therein.

Medical journal to be kept.

13. A medical journal shall be kept in every hospital, institution, and licensed house, registered under this Act, in such form as the Commissioners may from time to time direct.

Residence of medical practitioner.

14. In the case of any hospital, institution, or licensed house, registered under this Act, the Commissioners may by order in writing direct that a duly qualified medical practitioner shall reside therein.

Grants of money to guardians of the poor.

15. Nothing in this Act shall operate to deprive the guardians of the poor of any union of the power of sending pauper idiots or imbeciles to hospitals, institutions, and licensed houses, registered under this Act, or from receiving in respect of such idiots or imbeciles such sums of money as shall from time to time be granted by Parliament towards the maintenance and care of pauper lunatics, as if the same idiots and imbeciles were pauper lunatics.

Power to grant superannuation allowance.

16. The committee of management of any hospital, institution, or licensed house, registered under this Act, may grant to any officer or servant who is incapacitated by confirmed illness, age, or infirmity, or who has been an officer or servant in the hospital, institution, or house, for not less than fifteen years and is not less than fifty years old, such superannuation allowance, not ex-

ceeding two thirds of the salary, with the value of the lodgings, rations, or other allowances enjoyed by the superannuated person, as the committee think proper.

17. In this Act, if not inconsistent with the context,—

“Commissioners” means the Commissioners in Lunacy for the time being.

“Idiots” or “imbeciles” do not include lunatics.

“Lunatic” does not mean or include idiot or imbecile.

Definition.

Commis-

sioners.

Idiots or

imbeciles.

Lunatic.

Hospital and

institution.

“Hospital” and “institution” mean any hospital or institution or part of a hospital or institution (not being an asylum for lunatics) wherein idiots and imbeciles are received and supported wholly or partly by voluntary contributions, or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients.

“Licensed house” means any house licensed by the Commissioners in Lunacy, or by the justices of any county or borough, for the reception, care, education, and training of idiots and imbeciles.

THE SCHEDULE

FORM 1

Form of Medical Certificate

I, the undersigned *A.B.*, a person registered under the Medical Act, 1858, and in the actual practice of the medical profession, certify that I have carefully examined *C.D.*, an infant [*or of full age*], now residing at . . . , and that I am of opinion that the said *C.D.* is an idiot [*or has been imbecile from birth, or for* . . . years past *or from an early age*], and is capable of receiving benefit from [the institution (describing it)], registered under the Idiots Act, 1886.

(Signed)

Dated

(full postal address).

FORM 2

Form of Statement to accompany Medical Certificate

[If any particulars in this statement be not known, the fact to be so stated.]

Name of patient, with Christian name at length.

Sex and age.

When and where previously under care and treatment.

In any asylum or institution.

Whether subject to epilepsy.

Whether dangerous to others.

I certify that to the best of my knowledge the above particulars are correctly stated.

(Signed)

Name and full postal address.

[To be signed by the parent or guardian of the idiot or imbecile, or the person undertaking and performing towards him the duty of a parent or guardian.]

FORM 3

Form of Certificate of Reception

I hereby certify that _____ aged _____
was admitted into _____
on the _____ day of _____ 18____, on the request of
_____ of _____
and _____ of _____
and that he [*or she*] is alleged to be capable of deriving benefit from the
treatment he [*or she*] will receive herein.

A.B.

Superintendent or
Principal Officer.

Dated this _____ day of _____ 18____.
To the Commissioners in Lunacy.

THE LUNACY ACT, 1890

RULES MADE BY THE COMMISSIONERS IN LUNACY WITH THE APPROVAL OF THE LORD CHANCELLOR

- 1.—(1.) There shall be kept in every institution for lunatics—

Books to be kept.

 - a. A Visitors Book.
 - b. A Register of Patients.
 - c. A Medical Journal.
 - d. A Register of Medical Restraint.
 - e. A Medical Case Book.
 - f. A Register of Removals, Discharges, and Deaths.
- (2.) There shall also be kept in every hospital and licensed house a Patients Book and a Register of Voluntary Boarders.
- (3.) There shall be kept in every house where a single patient is detained a Medical Journal and a Register of Mechanical Restraint.
- (4.) In every institution for lunatics in which private and pauper patients are admitted there shall be kept a separate Register of Patients, Medical Journal, and Register of Removals, Discharges, and Deaths, for each class of patients.
- (5.) There shall be kept in every workhouse a Register of Mechanical Restraint.
2. The Register of Patients shall be in the Form 1 in the Shedule.
- 3.—(1.) The Medical Journal to be kept in institutions for lunatics shall be in the Form 2 in the Schedule.

Register of Patients.
Medical Journal.
- (2.) The Medical Journal in the case of single patients shall be in the Form 3 in the Schedule.
4. The Register of Mechanical Restraint shall be in the Form 4 in the Schedule.

Register of Mechanical Restraint.
5. The Register of Voluntary Boarders shall be in the Form 5 in the Schedule.

Register of Boarders.
6. The Register of Removals, Discharges, and Deaths shall be in the Form 6 in the Schedule.

Register of Removals, Discharges, and Deaths.
- 7.—(1.) The clerk of every asylum and the manager of every hospital and licensed house shall, immediately on the reception of a person as a lunatic, make an entry with respect to such lunatic in the Register of Patients according to the prescribed form, and containing the particulars therein specified, except as to the form of disorder.

Notices to be sent on reception.
- (2.) The entry as to the form of disorder shall be supplied by the medical officer of every asylum within one month, and by the medical officer of every hospital or house within seven days after the reception of a patient.
- (3.) The clerk of every asylum and manager of every hospital or licensed house shall, in the case of a person, not a pauper, within one clear day, and in the case of a pauper, after the second and before the end of the seventh day

after the patient's admission, send to the Commissioners a notice of admission in the Form 7 in the Schedule, and also a copy of the reception order and medical certificate or certificates upon which the same was made, and in the case of reception orders upon petition a copy of the petition and statement of particulars, and shall, in every case after the second and before the end of the seventh clear day after the patient's admission, send to the Commissioners a medical statement to be made and signed by the medical officer of the institution, according to the Form 8 in the Schedule.

(4.) The manager of every licensed house, within the jurisdiction of visitors, shall also within the times limited by this rule, send the like documents to the clerk of the visitors.

(5.) Every person who has charge of a single patient shall, within the times limited by this rule as regards patients not paupers, send to the Commissioners the like documents concerning such single patient, and shall, with the notice of admission, send a statement of the Christian and surname and occupation of the occupier of the house and of the person who has charge of the patient. The medical statement shall be made and signed by the medical practitioner who visits the patient.

Form of report to be sent at the end of a month after reception.

Who to keep Medical Journal and Case Book.

How often entries to be made in Medical Journal.

Entries in Case Books in hospitals and licensed houses.

8. The report to be sent to the Commissioners by the medical officer of every institution for lunatics, and the medical attendant of every single patient, at the expiration of one month after the reception of a private patient, shall be in the Form 9 in the Schedule.

9. The Medical Journal and Case Book to be kept in every institution for lunatics shall be kept by the medical officer thereof, and every entry made therein respectively shall be signed by the person making the same.

10. The prescribed entries in the Medical Journal to be kept in institutions for lunatics shall be made once in every week, or in the case of a licensed house at which visits by a medical practitioner at more distant intervals than once a week are permitted, at each visit.

11. There shall be entered in the Medical Case Book to be kept in institutions for lunatics the following particulars:—

(a.) A statement of the name, age, sex, and previous occupation of the patient, and whether married, single, or widowed.

(b.) An accurate description of the external appearance of the patient upon admission:—of the habit of body, and temperament; appearance of eyes, expression of countenance, and any peculiarity in form of head; physical state of the vascular and respiratory organs, and of the abdominal viscera, and their respective functions; state of the pulse, tongue, skin, &c.; and the presence or absence, on admission, of bruises or other injuries.

(c.) A description of the phenomena of the mental disorder:—the manner and period of the attack, with a minute account of the symptoms, and the changes produced in the patient's temper or disposition; specifying whether the malady displays itself by any, and what illusions, or irrational conduct, or morbid or dangerous habits or propensities; whether it has occasioned any failure of memory or understanding; or is connected with epilepsy, or ordinary paralysis, or symptoms of general paralysis, such as tremulous movement of the tongue, defect of articulation, or weakness or unsteadiness of gait.

(d.) Every particular which can be obtained respecting the previous history of the patient:—what are believed to have been the predisposing and exciting causes of the attack; what the previous habits, active or sedentary, temperate or otherwise; whether the patient has experienced any former attacks, and, if so, at what periods; whether any relatives have been subject to insanity; and whether the present attack has been preceded by any premonitory symptoms, such as restlessness, unusual elevation or depression of spirits, or any remarkable deviation from ordinary habits and conduct; and whether the patient has undergone any, and what, previous treatment, or has been subjected to personal restraint.

(e.) An accurate record of the medicines administered and other remedies employed, with the results.

(f.) An accurate record of all injuries and accidents.

12. The prescribed entries shall be made in the Case Book to be kept in every institution for lunatics at least once in every week during the first month after reception, and oftener when the nature of the case requires it. Afterwards in recent or curable cases such entries shall be made at least once in every month, and in chronic cases subject to little variation once in every three months.

How often entries to be made in Case Book.

13. The medical officer of every institution for lunatics shall, whenever required so to do by notice in writing signed by the Secretary of the Commissioners, send to the Commissioners a correct copy of all the entries, or of any particular entries or entry, in the Medical Case Book relative to any specified patient who is, or may have been, confined in the institution.

Copies of Case Book entries.

14.—(1.) The medical attendant of a single patient shall, as soon as possible after the admission of the patient, enter on blank pages to be left at the beginning of the Medical Journal a sketch of the previous history of the case and full particulars of the mental and bodily condition of the patient on admission.

Duties of medical attendant of single patient.

(2.) Such medical attendant shall also at each visit enter in the Medical Journal the date of the visit and full particulars of the mental and bodily condition of the patient, and a statement as to the condition of the house.

(3.) If the Commissioners allow a single patient to be visited less often than once in every two weeks, and the patient is in the charge of a medical practitioner, such practitioner shall once at least in every two weeks enter in the Medical Journal full particulars of the mental and bodily condition of the patient, with the date of the entry.

(4.) Every entry to be made under this rule shall be signed by the person who makes the same.

15. Every medical practitioner who visits a single patient, or under whose charge a single patient is, shall on the tenth of January, or within seven days from that time, in every year report in writing to the Commissioners the state of health, bodily and mental, of the patient, with such other circumstances as he may deem necessary to communicate.

Medical reports upon single patients.

16. The manager of every institution for lunatics, and every person having charge of a single patient shall at the end of every quarter send to the Commissioners a copy of every entry in the Register of Mechanical Restraint made during the quarter.

Copies of entries in Register of Mechanical Restraint.

Who to keep
Register of
Voluntary
Boarders.

Schedule of
rates of
payments for
private
patients.

Transfer of
patients and
leave of
absence.

Notices to be
sent of
remarks on
visitation.

Notice of
dismissal of
servants.

Entries to be
made on
removal,
discharge, or
death.

Notices to be
sent on
removal,
discharge,
escape, and
recapture.

17. The Register of Voluntary Boarders to be kept in licensed houses and hospitals shall be kept by the manager thereof.

18. The manager of every licensed house and hospital shall prepare and keep up an accurate list of the private patients for the time being on the books of the house or hospital, with the rates of payment made for the maintenance and care and treatment of such patients respectively; and such list shall be at all times accessible to the Commissioners or Commissioner visiting the house or hospital, and, in the case of a house licensed by justices, to the visitors of such house.

19.—(1.) When application is made to the Commissioners for their consent to the transfer of a private patient from one institution for lunatics to another, the medical officer of the institution from which the patient is to be removed shall furnish the Commissioners with a report as to the patient's mental and bodily condition, and fitness for transfer.

(2.) When application is made for the grant by the Commissioners or by visitors of leave of absence of a private patient from an institution for lunatics, or of a single patient from the house in which he is received, either for the benefit of the patient's health or on trial, it shall be accompanied by a recommendation from the medical officer of the institution or the medical attendant of the patient.

20.—(1.) The clerk of every asylum and the manager of every hospital or licensed house shall, within three days after each visit of one or more of the Commissioners, send to the office of the Commissioners, and in the case of a house licensed by justices, also to the clerk of the visitors, copies of all entries and remarks made by any visiting Commissioner or Commissioners at such visit in any of the books of the institution.

(2.) The manager of every hospital and licensed house shall also, within three days after each visit by any visitor, send to the office of the Commissioners and to the clerk to such visitors a true and perfect copy of all entries and remarks made by such visitors at such visit in any of the books of the hospital or house.

21. The clerk of every asylum, and the manager of every hospital or licensed house, shall within one week after the dismissal for misconduct of any person employed in connexion with the care of the patients therein, send notice in writing to the Commissioners of the dismissal and its cause.

22. The clerk of every asylum, and the manager of every hospital and licensed house, shall, within two clear days after the removal, discharge, or death of any patient, make an entry thereof in the Register of Patients, and also in the Register of Removals, Discharges, and Deaths, according to the prescribed form.

23.—(1.) The clerk of every asylum, and the manager of every hospital or licensed house, and the person having charge of a single patient, shall, within three clear days after the removal, discharge, escape, or recapture of a patient, send written notice thereof to the Commissioners, and also in the case of a lunatic so found by inquisition to the Chancery Visitors.

(2.) In the case of a licensed house within the jurisdiction of any visitors, the like notice shall, within the time aforesaid, also be sent by the manager of the house to the visitors.

(3.) Notices of removal and discharge shall be in the Forms 10 and 11 in

the Schedule. Notices of escape and recapture shall be in the Forms 12 and 13 in the Schedule.

(4.) Where upon the discharge of a pauper lunatic from an institution for lunatics the medical officer of the institution certifies that the lunatic has not recovered, and is a proper person to be kept in a workhouse as a lunatic, a copy of the certificate shall accompany the notice of discharge.

(5.) Notice of escape shall state the Christian name and surname of the patient, his state of mind, and the circumstances attending the escape.

(6.) Notice of recapture shall state when the patient was brought back, and under what circumstances, and whether with or without a fresh reception order or certificates.

24.—(1.) In the case of the death of a patient, not being a patient in a workhouse, a statement shall be prepared and signed setting forth—

Statement
and notice as
to death.

- (a.) The name, sex, and age of the patient;
- (b.) Whether married, single, or widowed;
- (c.) The profession, or occupation of the patient;
- (d.) His place of abode immediately prior to being placed under care and treatment, if known;
- (e.) The time and cause of, and the circumstances attending, the death;
- (f.) The duration of the disease of which the patient died;
- (g.) The name or names of any person or persons present at the death.

(2.) The statement shall be prepared and signed, in the case of a death in an asylum, by the clerk and medical officer of the asylum, and in any other case, by the medical person or persons who attended the patient in his last illness, and shall, within forty-eight hours of the death, be sent to the coroner of the district by the manager of the institution for lunatics in which the patient died, or by the person having charge of the single patient.

(3.) In the case of a lunatic dying in an institution for lunatics, the medical officer of the institution shall, within three days after the death, enter a copy of the statement in the Medical Case Book, and in the case of a single patient the person having charge of him shall, within the like period, enter a copy of the statement in the Medical Journal.

(4.) The clerk of the asylum, or the manager of the hospital or house, or upon the death of a single patient, the person who had charge of him, shall, within forty-eight hours of the death of a patient, send notice thereof in the Form 14 in the Schedule—

- (a.) To the Commissioners;
- (b.) To the relation or one of the relations named in the statement accompanying the order for the reception of the patient;
- (c.) To the registrar of deaths for the district;
- (d.) In the case of a licensed house within the jurisdiction of any visitors, also to the clerk of the visitors;
- (e.) In the case of a lunatic so found by inquisition, also to the Chancery Visitors;
- (f.) If the patient was not a pauper, also to the person upon whose petition the order for the admission of the patient was made, or who made the last payment on account of the patient;
- (g.) If the patient was a pauper, also to the relieving officer of the union or the clerk of the peace of the county or borough to which the patient was chargeable.

Half-yearly lists of patients in asylum to be made up.

25.—(1.) The clerk of every asylum shall, on the first of January and the first of July in every year, prepare a list, made up to those dates, of all pauper lunatics then in the asylum, according to the Form 15 in the Schedule.

(2.) Within fifteen days after the list is prepared, the clerk shall lay a copy before the committee of visitors, and shall send a copy to the Commissioners and to the clerk of each local authority to which the asylum belongs, to be laid before the local authority.

(3.) The clerk of every asylum receiving private patients shall, on the first of January and the first of July in every year, prepare a list, made up to those dates, containing the Christian names and surnames of all the private patients then in the asylum, according to the Form 16 in the Schedule; and shall, within fifteen days after the list is prepared, send a copy to the Commissioners, and shall, within the same time, transmit to the clerk of each local authority, for the purpose aforesaid, a certificate under his hand of the number of private patients of each sex.

Report of visiting committee to be sent to Commissioners.

26. The clerk to the committee of visitors of every asylum shall, within twenty-one days after their annual report has been laid before the local authority by the committee of visitors, transmit a copy to the Commissioners.

Statement of condition of pauper lunatics.

27. The manager of every asylum shall once at least in each half year send to the guardians of every union a statement of the mental and bodily condition of every pauper lunatic chargeable to the union.

Quarterly return of pauper lunatics not in an institution for lunatics.

28.—(1.) In the case of pauper lunatics not in an institution for lunatics, the medical officer of every district of a union and of every workhouse shall, within seven days after every thirty-first of March, thirtieth of June, thirtieth of September, and thirty-first of December, make a return of all such lunatics visited by him during the preceding quarter; or if there were no such lunatics within the district or workhouse of which he is medical officer, shall make a return to that effect.

(2.) Such returns shall be in the Forms 17 and 18 in the Schedule, and shall, within the time aforesaid, be delivered or sent to the clerk to the guardians of the union to which the return relates.

(3.) The clerk receiving the return shall, within three days after receipt thereof, make a copy thereof, and shall, within the same period, send the return to the Commissioners, and the copy to the clerk to the committee of visitors of the asylum for the county or borough in which the union for which he is clerk is wholly or partly situate.

Annual return by clerks to boards of guardians.

29. The clerk of the board of guardians of every union shall, on the first of January in every year, or as soon after as possible, make out and sign a complete list in the Form 19 in the Schedule, made up to that date, of all lunatics chargeable to the union, and shall, on or before the first of February following, send a copy of the list to the following authorities:—

(a.) The Local Government Board;

(b.) The Commissioners;

(c.) The committee of visitors of the asylum of the county or borough, or each county or borough, in which the union is wholly or partly situate;

(d.) The clerk of the local authority within the area whereof the union is wholly or partly situate, to be laid before the local authority.

30. All entries to be made under these rules shall be made in a manner so clear and distinct as to admit of being easily referred to and extracted whenever the Commissioners shall so require. Entries to be clear and distinct.

31. The manager of every institution for lunatics shall furnish to the Commissioners, at such times and in such form as they may from time to time prescribe, such annual and other returns and information of or in any way relating to the patients of or boarders in the institution, as the Commissioners may, in their discretion, require. Returns and information to be furnished by managers.

32.—(1.) Every applicant for a licence for a house shall at least fourteen clear days before a quarterly or other meeting of the Commissioners, or before a quarter or special sessions of the licensing justices, give notice of the application— Applications for licences.

(a.) If the house is within the immediate jurisdiction of the Commissioners, to the Commissioners;

(b.) If elsewhere, to the clerk of the peace for the county or borough in which it is situate.

(2.) The notice shall contain—

(a.) The Christian and surname, place of abode, and occupation of the proposed licensee;

(b.) The Christian and surname of the person who is to reside in the house; and if the house has not been previously licensed, a full description of the estate or interest of the proposed licensee therein.

(3.) If the house has not been previously licensed, the applicant shall send with his notice the following documents:—

(a.) A plan of all houses and buildings to be included in the licence, drawn upon a scale of eight feet to an inch, with a description of the situation of the house, and the length, breadth, and height of, and a reference by a figure or letter to, every room therein, distinguishing the rooms to be appropriated to patients from those to be occupied by the family and domestic servants of the resident licensee.

(b.) A statement of the quantity of land not covered by building annexed to the house, and appropriated to the exclusive use, exercise, and recreation of the patients, with a plan thereof drawn to the scale of 100 feet to an inch.

(c.) A statement of the number of patients of each sex to be received, and of the means by which the sexes are to be kept apart.

(4.) The notice and accompanying documents when sent to a clerk of the peace shall by him be laid before the justices when they consider the application for the licence.

(5.) If a house not within the immediate jurisdiction of the Commissioners has not been previously licensed, copies of the notice and accompanying documents shall, at least thirty days before the quarter or special sessions at which the application is to be considered, be sent by the applicant to the Commissioners.

33.—(1.) Every person applying for the renewal of the licence shall send to the Commissioners, and if his application is to any justices, shall also send to the clerk of the peace for the county or borough a statement, signed by the applicant, containing the names and number of the patients of each sex On renewal of licence, statement to be furnished of the number and class

of patients
detained.

then detained in such house, and distinguishing between private and pauper patients.

(2.) Copies of all entries made by the visiting Commissioners in the books of a licensed house since the last renewal of the licence shall be laid before the justices upon every renewal of a licence.

Notice of
alterations
and additions
to licensed
houses.

34.—(1.) Before any alteration or addition is made to, in, or about a licensed house, or its appurtenances, the licensee shall send notice in writing of the proposed alteration or addition to the Commissioners, or, in the case of a house licensed by justices of a county or borough, to the clerk of the peace of the county or borough.

(2.) Such notice shall be accompanied by a full description of the proposed alteration or addition, with plans drawn to a scale of eight feet to an inch.

(3.) Every clerk of the peace to whom a notice is given under this rule shall within three days after receiving the same send the notice, together with the accompanying description and plans, or copies thereof respectively, to the Commissioners.

Plans of
hospitals.

35.—(1.) With every application for the registration of a hospital for the reception of lunatics the following plans shall be sent to the Commissioners:—

(a.) A general plan, to the scale of one hundred feet to an inch, of the land proposed to be occupied with the hospital, with a block plan of the buildings drawn thereon, and showing the positions and area of the exercise grounds, gardens, and roads of approach.

(b.) Plans of the basement, ground, and every other floor of the principal buildings and offices, and also of the roofs, with the dimensions of the rooms and the thicknesses of the walls.

(c.) Elevations of the fronts and sides of the principal buildings and offices.

(d.) Transverse and longitudinal sections sufficient to show the heights of the various rooms in the buildings.

(e.) A general plan showing the courses of the drains and the manner in which the sewage will be disposed of.

(2.) The plans (b) to (e) inclusive shall be drawn to a scale of eight feet to an inch

(3.) There shall also be furnished with every application a concise description of the hospital buildings, and of the systems of heating, lighting, and ventilation adopted, and the plans shall show the manner in which the various portions of the building are to be appropriated to the different classes of patients to be received.

Notice of
alterations
and additions
to hospitals.

36.—(1.) Before any alteration or addition is made to, in, or about any hospital, whether registered after or before the date of these rules, the superintendent shall send notice in writing of the proposed alteration or addition to the Commissioners.

(2.) Every such notice shall be accompanied by plans and descriptions similar to those specified in the last preceding rule.

Hospitals
already
registered to
furnish
plans.

37. In the case of hospitals registered before the date of these rules, the Commissioners may require the superintendent of any such hospital to furnish, at the cost of the hospital, such plans of all or any of the buildings used for the purposes of the hospital as, being of the description hereinbefore specified, the Commissioners may think fit.

Abstracts of

38. The superintendent of every hospital shall within one calendar month

next after the accounts of the hospital shall have been submitted to the hospital; Charity Commissioners, or have been audited, send to the Commissioners an abstract of the accounts in such form as the Commissioners shall from time to time prescribe. accounts to be sent to Commissioners.

§ 39. The rules shall come into operation on the first of May one thousand eight hundred and ninety.

THE SCHE-
FORM
REGISTER

Date of last previous Admission, if any. No. in Order of Admission.	Date of Admission.	Date of continuation of Reception Order.	Christian and Surname at Length.	Sex.		Age.	Condition as to Marriage.			Condition of Life, and previous Occupation.	Previous place of Abode.	Union, County, or Borough to which chargeable.	By whose Authority sent.	Dates of Medical Certificates, and by whom signed.
				M.	F.		Married.	Single.	Widowed.					
1	1880: Jan. 3		William Johnson	1	...	23	...	1	...	Carpenter	...	...	...	...
2	1882: June 9		William Johnson	1	...	25	...	1	...	...	...	...	...	...
3	1883: July 6		William Johnson	1	...	26	1	...	...	...	...	...	...	...

FORM 2.

MEDICAL JOURNAL TO BE KEPT AT ASYLUMS, HOSPITALS, AND
LICENSED HOUSES.

Date.	Number of Patients.		Patients who are or since the last entry have been in seclusion, when, and for what period, and reasons.		Patients under medical treatment, and for what, if any bodily disorder.		Deaths, injuries, and violence to patients since the last entry.
	Males.	Females.	Males.	Females.	Males.	Females.	

DULE.

1.

OF PATIENTS.

Form of Mental Disorder.	Supposed Cause of Insanity.	Bodily Condition and Name of Disease, if any.	Epileptics.	Congenital Idiots.	Duration of existing Attack.			Number of previous Attacks.	Age on first Attack.	Date of Removal, Discharge, or Death.	Removed or discharged.			Observations.
					Years.	Months.	Weeks.				Recovered.	Relieved.	Not improved.	
Melancholia	4	...	2	17	1881 : Sept. 7	1			
...	7	...	...	3	...	1882 : Dec. 2	1			
...	3	...	...	4	...	1884 : June 8	...	...	...	1

FORM 3.

MEDICAL JOURNAL FOR SINGLE PATIENTS.

Date.	Mental condition; what evidence of insanity? Any and what change since last visit.	Bodily Health and Condition.	Seclusion since last visit. When and how long.	Visits of friends; date of visit; name of friend.	State of house and furniture, bed and bedding supply, and condition of wearing apparel.	Dietary proper? if not, state the reason.	Employment, exercise, and amusements.

FORM 4.
REGISTER OF MECHANICAL RESTRAINT.

Date.	Names of Patients.		Means of Restraint employed.	Duration in Hours.	Certificate of Medical Superintendent, Medical Officer, Medical Proprietor, or Medical Attendant, stating grounds upon which the restraint was employed.
	Male.	Female.			
		C. S. Burns	Strait waistcoat	20	

FORM 5.
REGISTER OF VOLUNTARY BOARDERS.

Date of Reception into Institution.	Names of Boarders.		Terms for which Residence is permitted.	Extended Term, and Date of Consent to the Extension.	Names of Commissioners or Visitors consenting to Reception, or Extension of Term, where such Consent necessary.	Date on which the Boarder leaves the Institution.	Reception, whether for Treatment, or as Relative or Friend of a Patient.
	Male.	Female.					

FORM 6.

REGISTER OF REMOVALS, DISCHARGES, AND DEATHS.

Date of Removal, Discharge, or Death.	Date of last Admission.	No. in Register of Patients.	Christian and Surname at Length.	Sex.		Discharged.						Removal, and to what Asylum, registered Hospital, or licensed House.				Assigned Cause of Death.	Age at Death.		Observations.
				M.	F.	Recovered.		Relieved.		Not improved.		Relieved.	Not improved.		Died.				
						M.	F.	M.	F.	M.	F.		M.	F.			M.	F.	
1881 : Sept. 1	1880 : Jan. 3	1	William Johnson	1	...	1													
1882 : Dec. 2	1882 : June 9	2	William Johnson	1	...	1													
1884 : June 8	1883 : July 6	3	William Johnson	1	...	...	...	...	...	...	...	...	...	...	...	...	1 ...	Phthisis 27

FORM 7

NOTICE OF ADMISSION

Date of reception order, the _____ day of _____, 18 ____.

I hereby give you notice that *A.B.* was admitted into this asylum [*or* hospital *or* house] as a private [*or* pauper] patient [*or* into the house of] situate at _____ as a single patient] on the _____ day of _____, and I hereby transmit a copy of the reception order and medical certificates [*or* certificate] and of the petition and statement of particulars on which he was received.

A statement with respect to the mental and bodily condition of the above-named patient will be forwarded in due course.

[*or as the case may be.* Subjoined is a statement with respect to the mental and bodily condition of the patient.]

(Signed)

clerk of the _____ asylum, *or* manager of the lunatic hospital known as _____, situate at _____,
or of the licensed house known as _____ situate at _____,
or the person having charge of the said lunatic as a single patient.

Dated the _____ day of _____

To the Commissioners in Lunacy

[*or as the case may be.*]

FORM 8

MEDICAL STATEMENT

I have this day [*some day not less than two clear days after the admission of the patient*] seen and examined _____ the patient mentioned in the Notice of Admission dated the _____ day of _____, [*or as the case may be* the above notice] and hereby certify that with respect to mental state he [*or she*] [*describing it*] and with respect to bodily health and condition he [*or she*] [*describing it*].

Dated the _____ day of _____

(Signed)

Medical officer of the _____ asylum, *or* hospital known as _____ situate at _____, *or* resident medical practitioner *or* medical attendant of the licensed house known as _____, situate at _____, *or* medical practitioner visiting the said patient.

FORM 9

REPORT AS TO PRIVATE PATIENT

To be sent at the expiration of *one month after* reception.

I have this day seen and examined _____ received here on the _____ day of _____, 189____, and report that with respect to mental condition he is _____, and that with respect to bodily condition he is _____

Dated this _____ day of _____ 189____

A.B., medical officer of the _____ asylum, *or* hospital, *or* medical attendant of (licensed house) *or* medical practitioner visiting the said patient.

To the Commissioners in Lunacy.

FORM 10
NOTICE OF REMOVAL

I hereby give you notice that , a private [or pauper] patient received into this asylum [or hospital or licensed house or house] on the day of was, on the day of , removed to relieved [or not improved] by the authority of

(Signed)
clerk of the asylum or manager of the lunatic hospital known as , situate at , or of the licensed house known as , situate at , or the person having charge of the said lunatic as a single patient.

Dated the day of
To the Commissioners in Lunacy
[or as the case may be].

FORM 11
NOTICE OF DISCHARGE

I hereby give you notice that , a private [or pauper] patient received into this asylum [or hospital or licensed house or house] on the day of , was discharged therefrom recovered [or relieved or not improved] on the day of by the authority of

(Signed)
clerk of the asylum, or manager of the lunatic hospital known as situate at , or of the licensed house known as , situate at , or the person having charge of the said lunatic as a single patient.

Dated the day of
To the Commissioners in Lunacy.
[or as the case may be].

FORM 12
NOTICE OF ESCAPE

I hereby give you notice that , a private [or pauper] patient received into this asylum [or hospital or licensed house or house] on the day of , escaped therefrom on the day of

The state of mind of the patient at the time of his escape was [state it].
The circumstances attending the escape were as follows [state them].

(Signed)
clerk of the asylum, or manager of the lunatic hospital known as situate at , or of the licensed house as , situate at , or the person having charge of the said lunatic as a single patient.

Dated the day of
To the Commissioners in Lunacy
[or as the case may be].

FORM 13

NOTICE OF RECAPTURE

I hereby give you notice that _____, a private [*or pauper*] patient who was received into this asylum [*or hospital or licensed house or house*] on the _____ day of _____ and escaped therefrom on the _____ day of _____, was on the _____ day of _____ recaptured under the following circumstances [*state them*].

The patient has been again received into this asylum [*or hospital or licensed house or house*] under [*or without*] a fresh reception order and certificates.

(Signed)

_____, clerk of the _____ asylum, *or* manager of the lunatic hospital known as _____, situate at _____, *or* of the licensed house known as _____, situate at _____, *or* the person

having charge of the said lunatic as a single patient.

Dated the _____ day of _____

To the Commissioners in Lunacy

[*or as the case may be*].

FORM 14

NOTICE OF DEATH

I hereby give you notice that _____, a private [*or pauper*] patient received into this asylum [*or hospital or licensed house or house*] on the _____ day of _____, died therein on the _____ day of _____

And I certify that _____ was present at the death of the said _____ and that the apparent cause of his death [*ascertained by post-mortem examination if so*] was _____

(Signed)

_____, clerk of the _____ asylum, *or* manager of the lunatic hospital known as _____, situate at _____, *or* of the licensed house known as _____, situate at _____, *or* the person

having charge of the said lunatic as a single patient.

Dated the _____ day of _____

To the Commissioners in Lunacy

[*or as the case may be*].

FORM 15

NAMES of all [*male*] *or* [*female*] *as the case may be*, pauper lunatics in the asylum at _____ for the county [*or borough, &c., as the case may be*] of _____ on the 1st day of January or July, 18 ____.

Names of those chargeable to a Union.	Name of Union to which chargeable.	Date of Admission.	Names of those chargeable exclusively to County or Borough Fund.	Date of Admission.	Names of those chargeable to Visitors of other Asylums.	Date of Admission.	Criminal Patients.	Date of Admission.

This is a correct return.

Dated _____

(Signed)

Clerk of the Asylum.

FORM 16

NAMES of all private lunatics in the asylum at
borough, &c., as the case may be], of
18 .

for the county [or
on the . . . day of

Name.	Date of Admission.

This is a correct list.

(Signed)

Clerk of the Asylum.

FORM 17

County of . . . Union [or Parish] of . . .
District of . . .
QUARTERLY LIST of LUNATIC PAUPERS within the . . . district of the
union of . . . [or the parish of . . .], in the county or borough of
. . ., not in any asylum, hospital, or licensed house.

Name.	Sex.	Age.	Form of Mental Disorder.	Duration of present attack of Insanity, and if idiotic, whether or not from birth.	Resident in Work-house.	Non-Resident in Work-house, where and with whom resident.	Date of visit.	In what state as to Bodily and Mental Condition, Accommodation, and general Care and Management.	If ever mechanically restrained, why, and by what means, and how often.

I declare that I have personally examined the several persons whose names are specified in the above list on the day set opposite their names; and I certify, first, with respect to those appearing by the above list to be in the workhouse, that the accommodation in the workhouse is sufficient for their reception, and that they are all [or, all except . . .] proper patients to be kept in the workhouse; and, secondly, with respect to those appearing by the above list to be resident elsewhere than in the workhouse, that they are all [or, all except . . .]

[or, all except . . .] properly taken care of, and may properly remain out of an asylum.

I declare that the persons in the above list are, to the best of my knowledge, the only pauper lunatics in the . . . district of the union of [or in the parish of . . .] who are not in an asylum, hospital, or licensed house.

(Signed) A.B.

Medical officer of the
[or parish] of . . .

district of the union

Dated the . . .

day of . . .

REGULATIONS BY THE COMMISSIONERS IN LUNACY AS TO
INSTRUMENTS AND APPLIANCES FOR THE MECHANICAL
BODILY RESTRAINT OF LUNATICS

LUNACY ACT, 1890, s. 40

By subsection 6 of section 40 of the Lunacy Act, 1890, it is enacted as follows:

"In the application of this section mechanical means shall be such instruments and appliances as the Commissioners may, by regulations to be made from time to time, determine."

The intention and object of the above section obviously is to discourage the employment of mechanical restraint in the treatment of the insane, except in cases of manifest and urgent necessity: an object which the Lunacy Commission has always endeavoured to promote. It is with great reluctance, therefore, that the Commissioners approach the performance of the duty imposed upon them by the Legislature, of determining the instruments and appliances of restraint, and their discharge of the duty must not be construed as implying any greater countenance by them of this mode of treatment than they have hitherto given to it.

They recognise, however, as the section referred to recognises, that cases will occur in which it is necessary for the safety of the patient or of others, or is beneficial to the patient, that mechanical restraint should be applied; but they hold that the application of it should be restricted within the narrowest limits possible, that the restraint should be applied by means the most humane that can be contrived, should not be long continued without intermissions, and should be dispensed with immediately it has effected the purpose for which it is employed.

In pursuance of subsection 6 of section 40 of the Lunacy Act, 1890, the Commissioners in Lunacy, by this regulation under their seal, do hereby determine that in the application of that section "mechanical means" of bodily restraint shall be and include all instruments and appliances whereby the movements of the body or of any of the limbs of a lunatic are restrained or impeded.

The Commissioners direct that at each visit of Commissioners or a Commissioner to an asylum, hospital, or licensed house, or to a single patient, all instruments and mechanical appliances which may have been employed in the application of bodily restraint to a lunatic since the last preceding visit of Commissioners or a Commissioner, be produced to the visiting Commissioners or Commissioner by the superintendent, resident medical officer, or resident licensee, or the person having charge of the single patient.

By order of the Board,

G. HAROLD URMSON,

Secretary.

19, Whitehall Place, London, S.W.,
the 9th day of April, 1890.

RULES MADE BY THE LORD CHANCELLOR UNDER SECTION 338,
SUB-SECTION 4

1. If on the presentation to a judge of county courts of a petition for a reception order, or the transmission to a judge of a notice that a lunatic desires to exercise the right of being taken before or being visited by him, such judge is unable to proceed upon such petition or notice without interfering with or delaying the exercise of his ordinary jurisdiction, it shall be lawful for him by writing under his hand, to certify such inability, together with the grounds upon which the certificate is founded, and thereupon to send the petition or notice, and the documents accompanying the same, together with the certificate, by registered post, to the justices clerk of the petty sessional division or borough where the lunatic is, to be transmitted by the clerk to some other of the judicial authorities mentioned in section 9, sub-section 1, of the Lunacy Act, 1890; and such other judicial authority shall thereupon proceed in the matter as if the petition had been presented or the notice had been transmitted to him in the first instance.

2. A judge of county courts signing a certificate under these rules shall also send a copy thereof to the Lord Chancellor.

3. Certificates under these rules shall be according to the form in the schedule.

THE SCHEDULE

FORM OF CERTIFICATE

Whereas a petition for a reception order under the Lunacy Act, 1890, in the matter of *A.B.*, a person alleged to be of unsound mind, has been presented to me: [*or*, Whereas a notice of the desire of *A.B.*, a person under care and treatment as a lunatic, to be taken, under the Lunacy Act, 1890, before or visited by a judge of county courts, magistrate, or justice of the peace has been transmitted to me:]

Now I, the undersigned, certify that I am unable to proceed upon the said petition [*or* the said notice] without interfering with or delaying the exercise of my ordinary jurisdiction as a judge of county courts. The grounds upon which this certificate is founded are as follows: [*here state them*].

(Signed)

Judge of the county court of

Dated

(Signed)

HALSBURY, C.

March 29, 1890.

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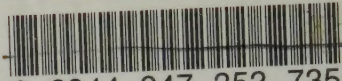
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